

COUNTY OF LOS ANGELES
DEPARTMENT OF PARKS AND RECREATION



May 3, 2005

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

**APPROVE A CONCESSION AGREEMENT WITH
KENNETH AND COURTNEY HANCE,
dba ENHANCE TENNIS MANAGEMENT,
FOR THE OPERATION AND MAINTENANCE OF THE TENNIS CENTER
AT WHITTIER NARROWS RECREATION AREA
(First District - 3 Vote Matter)**

IT IS RECOMMENDED THAT YOUR BOARD:

1. Find that approval of the Concession Agreement is exempt under the California Environmental Quality Act (CEQA).
2. Approve and instruct the Chair to sign the attached Concession Agreement between the County and Kenneth and Courtney Hance, dba Enhance Tennis Management (ETM), for the operation and maintenance of the tennis center at Whittier Narrows Recreation Area for a term of five (5) years with one 2-year option, effective upon Board approval.
3. Instruct the Auditor-Controller to establish an interest bearing Trust Fund to receive revenues dedicated to capital improvements at the Whittier Narrows Tennis Center.

PURPOSE/JUSTIFICATION OF THE RECOMMENDED ACTION

The recommended action would approve a five year Concession Agreement with ETM, upon Board approval. The tennis center concession at Whittier Narrows Recreation Area (Whittier Narrows) has been operated under various concession agreements since 1983. The previous concessionaire, West Coast Tennis, submitted the second highest rated of the two proposals received for the new concession agreement.

Whittier Narrows is operated by the County, through the Department of Parks and Recreation, under a long-term lease with the U. S. Army Corps of Engineers (Corps of Engineers). The County is authorized by the provision of Government Code Section 25907 to lease land for concessions and services that are consistent with public park and recreation purposes. A concession for the operation and maintenance of the tennis center at Whittier Narrows is consistent with those purposes.

Implementation of Strategic Plan Goals

The proposed Concession Agreement will further the Board-approved County Strategic Plan Goal 3, Organizational Effectiveness, by utilizing an experienced tennis operator to provide and conduct tennis-related activities at Whittier Narrows. It will also further Goals 4, Fiscal Responsibility, by increasing revenues and providing funding for infrastructure improvements at the tennis center, and Goal 5, Children and Families' Well-Being, by providing adult work-out sessions, free demonstration day clinics, and establishing a premiere junior tennis program.

FISCAL IMPACT/FINANCING

Pursuant to the terms of the Concession Agreement, the concessionaire shall pay the County either the sum of the percentages of monthly gross receipts or a monthly minimum of \$2,500, whichever is greater, \$500 of which will be deposited to the trust fund for capital improvements to the tennis center.

The previous concessionaire paid the County rent equal to the greater of the sum of the percentages of monthly gross receipts or a monthly minimum of \$1,500. In Fiscal Year 2003-04, the Department received total rent payments of \$21,069. The new agreement will guarantee annual revenues of at least \$30,000 to the Department, including \$24,000 to the Department's General Fund operating budget and \$6,000 to the trust fund for capital improvements.

In addition, the concessionaire will complete a capital improvement program, at no cost to the County, during the first four years of the Concession Agreement. These improvement projects include construction of a multi-use area for picnics and award presentations, installation of a new public address system, and resurfacing of the 16 tennis courts.

Upon the successful completion of these improvements, and if the concessionaire is compliant with all other contract terms, the Director may extend the agreement for up to two (2) years.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The County is authorized to contract for concessions and services that are consistent with public park and recreation purposes within Whittier Narrows, pursuant to the provisions of the "Department of the Army Lease for Public Park and Recreational Purposes Whittier Narrows Flood Control Basin Los Angeles, California Number DACW09-1-86-43" granted to the County by the Secretary of the Army. The Corps of Engineers has reviewed and approved the proposed Concession Agreement.

The term of the Concession Agreement for the operation and maintenance of the tennis center is for five (5) years. This term may be extended for a total of two (2) years by the Director, provided the required capital improvements identified above have been satisfactorily completed and the concessionaire is in full contract compliance.

The County reserves the right to terminate this Concession Agreement, in whole or in part, upon transfer of title of the facility to another public agency unless that agency accepts assignment of this Concession Agreement. In addition, the County may terminate all or portions of this Concession Agreement due to park closure, improper consideration, non adherence to County Lobbyist Ordinance, and concessionaire's failure to comply with the County's Child Support Program. The Concession Agreement also addresses the County's GAIN/GROW Program, Federal Earned Income Credit, and the County's Safely Surrendered Baby Law, and Quality Assurance Program.

County Counsel has approved the Concession Agreement as to form, and the Corps of Engineers has also reviewed and approved the Concession Agreement. Additionally, ETM has executed the attached Concession Agreement and will provide the required insurance policy naming the County of Los Angeles as an additional insured.

ENVIROMENTAL DOCUMENTATION

The approval of the Concession Agreement for the operation and maintenance of the tennis center at Whittier Narrows is exempt under the Guidelines for the Implementation of the California Environmental Quality Act (CEQA) under Section 15323 and Class 23 of the Environmental Document Reporting Procedures and Guidelines, adopted by your Board on November 17, 1987, because this action is consistent with the normal operations of the existing facility for public gatherings for which it was designed and where there is a history of the facility being used for the same or similar kind of purpose. A similar activity has been occurring for a period of at least three (3) years and that there is a reasonable expectation that the future occurrence of the activity would not represent a change in the operation of the facility.

CONTRACTING PROCESS

The previous agreement terminated because the concessionaire, West Coast Tennis (WCT), failed to exercise its option to extend their agreement in writing as required. Thus, the agreement expired on June 30, 2004, and WCT agreed to continue on a month-to-month basis until a new solicitation could be prepared. On September 9, 2004, the Department commenced a solicitation to select an operator for Whittier Narrows Tennis Center. The Department sent thirty-nine (39) invitation letters to potential proposers who had previously contacted the Department to express interest in operating and maintaining tennis centers on County facilities. Notice of the solicitation was also posted on the County's "Doing Business with Us" web site and the Department's web site. The invitations included bilingual instructions on how to contact the Department regarding the solicitation. Request for Proposal (RFP) Packages were available to proposers on September 13, 2004, and a conference was held on September 23, 2004, at Whittier Narrows and was attended by one (1) potential proposer. Two (2) proposals were received on October 5, 2004, and both met the minimum requirements as specified in the RFP package.

A three-member evaluation panel, comprised of two Department employees and a concession contract manager from the City of Los Angeles Department of Recreation and Parks, conducted the proposal evaluations. The panelists evaluated each proposal based on criteria identified in the RFP, which included the proposer's experience and financial stability, proposed rent to the County, and proposed range of recreational services. The evaluation panel interviewed both proposers and completed their evaluations on October 28, 2004. Based on these evaluations, the proposal submitted by ETM received the highest ranking. The concessionaire was selected without regard to gender, race, creed or color.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

The month-to-month holdover of the previous agreement expired on January 31, 2005. There will be no impact on the activities and services provided at the Whittier Narrows Tennis Center. Since that time, ETM has been operating the facility under a use permit. In addition to the activities and services that have historically been provided at Whittier Narrows Tennis Center, the proposed concessionaire will also provide adult workout sessions, free demonstration day clinics, and establish a premiere junior tennis program.

The Honorable Board of Supervisors
May 3, 2005
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CONCLUSION

A certified copy of the action taken by your Board and a fully executed copy of the attached Concession Agreement should be mailed to Enhance Tennis Management, 1201 North Potrero Avenue, South El Monte, California, 91733. In addition, it is requested that one (1) conformed copy be sent to the Treasurer and Tax Collector, one (1) conformed copy be sent to the Assessor, and one (1) conformed copy be forwarded to this Department.

Respectfully submitted,


Russ Guiney
Director

MG:tls

Attachment (22)



**CONCESSION
AGREEMENT**

BY AND BETWEEN

COUNTY OF LOS ANGELES

AND

**KENNETH AND COURTNEY HANCE
dba ENHANCE TENNIS MANAGEMENT**

FOR

Operation and Maintenance of the
Whittier Narrows Tennis Center

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**CONCESSION AGREEMENT FOR THE
OPERATION AND MAINTENANCE OF THE
WHITTIER NARROWS TENNIS CENTER**

THIS AGREEMENT, made and entered into this _____ day of _____,
2005,

BY AND BETWEEN

COUNTY OF LOS ANGELES, a
body corporate and politic,
hereinafter referred to as "County",

AND

KENNETH AND COURTNEY HANCE,
dba Enhance Tennis Management,
hereinafter referred to as "Concessionaire",

RECITALS

WHEREAS, County is authorized by the provision of Government Code Section 25907 to lease and sublease recreation lands for concessions and services that are consistent with public park and recreation purposes; and

WHEREAS, the County, as approved by the Board of Supervisors of Los Angeles County on April 14, 1987, is authorized to contract for such services within the Whittier Narrows Recreation Area, pursuant to the provisions of the "Department of the Army Lease for Public Park and Recreational Purposes Whittier Narrows Flood Control Basin Los Angeles, California No. DACW09-1-86-43" granted to County by the Secretary of the Army, under authority of Section 4 of the Act of Congress approved on December 22, 1944 as amended; and

WHEREAS, a concession for the provision of tennis center services is consistent with said purposes; and

WHEREAS, Concessionaire is willing to exercise the grant of such a concession in accordance with the terms and conditions prescribed therefor; and

WHEREAS, the District Engineer for the Los Angeles District of the Army Corps of Engineers has approved the agreement and use granted herein.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions set forth herein, the parties hereto and each of them do agree as follows:

1.0 OPERATING AGREEMENT WITH CORPS

1.1 This Agreement is granted subject to all rights and privileges retained by the United States of America, Department of the Army, (hereinafter: United States) within the Whittier Narrows Recreation Area pursuant to the provisions and conditions of the "Department of the Army Lease for Park and Recreational Purposes Whittier Narrows Flood Control Basin, No. DACW09-1-86-43", as approved by the Board of Supervisors of Los Angeles County on April 14, 1987 and granted to County by the Secretary of the Army under authority of Section 4 of the Act of Congress approved December 22, 1944, as amended. Accordingly, Concessionaire accepts and agrees to be bound by the following conditions thereof:

- a. That the primary purpose of the Whittier Narrows Flood Control Basin is the control of flood, and nothing herein expressed or implied shall be construed so as to conflict with that purpose.
- b. That the concession premises shall be subordinate to the use thereof by the Department of the Army in the operation and maintenance of the Whittier Narrows Flood Control and Basin.
- c. That the exercise of the privileges granted herein shall conform to such rules and regulations as may be prescribed by the Secretary of the Army to govern the public use of the Whittier Narrows Recreational Area, and shall be subject to the general supervision of the District Engineer for the Los Angeles District of the Army Corps of Engineers (hereinafter: District Engineer).
- d. That the United States shall be held harmless from all claims which may arise from or be incident to the exercise of the privileges granted herein.
- e. That the United States and the Los Angeles County Flood Control District shall not be liable for damages to property or injuries to persons which may arise from or be incidental to the exercise of the privileges granted herein or for damages to the property of Concessionaire, or for damages to the property or injuries to the

person of Concessionaire and/or the officers, agents, servants or employees or others who may be on the concession premises at their invitation or the invitation of any one of them, arising from or incident to the flooding of said premises by the United States or the Los Angeles County Flood Control District, or flooding from any other cause, or arising from or incident to any other governmental activities on the concession premises, and Concessionaire shall hold the United States, the Los Angeles County Flood Control District and the County of Los Angeles harmless from any and all such claims.

- f. That this Agreement shall be subject to the prior approval of the District Engineer.
- g. That charges for services rendered and for the use of the concession premises shall be reasonable and shall have the prior written approval of the District Engineer.
- h. That Concessionaire shall hold the United States, the Los Angeles County Flood District and the County of Los Angeles harmless from any and all claims or rights of action for damages which may or might arise or accrue to Concessionaire and/or the officers, agents, servants, employees or others who may be on the concession premises at their invitation or the invitation of any one of them, by reason of injuries to the property, or the person of any of them resulting from the entry upon or the use of the concession premises, by the United States, the Los Angeles County Flood Control District, the County of Los Angeles or any one of them at anytime, for any purpose necessary or convenient in connection with river and flood control work, or for the removal of timber required or necessary for such work, or by reason of the flooding of the concession premises, or any part thereof, when in the judgment of any of them such flooding is necessary in connection with flood control work.
- i. That the concession premises shall not be used for human habitation except for night watchmen or patrolmen. Any such night watchmen or

patrolmen, and any structures or trailers located on the premises for the use of such persons shall be subject to the prior approval thereof by the District Engineer.

- j. That the United States, its officers, agents and employees may enter upon the concession premises at any time for any purpose necessary or convenient in connection with river and flood control work, and to remove therefrom timber or other material required or necessary for such work, to flood said premises when necessary, and/or to make any other use thereof as may be necessary in connection with flood control work, and Concessionaire shall have no claim for damages of any character on account thereof against the United States or any agent, officer, or employee thereof.
- k. That the United States may construct, or permit the construction of, facilities for military requirements and for communications, electrical distribution or transmission, water supply, flood channels, sewage disposal and similar purposes on the concession premises, and Concessionaire shall have no claim for compensation for damage of any character on account thereof.
- l. That this Agreement may be revoked by the Secretary of the Army in the event the County and/or Concessionaire violates any of the terms and conditions of this Agreement and persists therein for a period of thirty (30) days after notice thereof in writing by the District Engineer. Upon any such revocation, Concessionaire shall vacate the concession premises, remove all property therefrom and restore said premises to a condition satisfactory to the District Engineer within such time as the Secretary of the Army may designate. In the event of failure or neglect to remove property and/or restore the premises, then, at the option of the Secretary of the Army, said property shall either become the property of the United States without compensation therefor, or the Secretary of the Army may cause it to be removed and the premises to be so restored at the expense of Concessionaire, and

no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work.

- m. That no member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this Agreement or of the benefits arising from the Concessionaire's operations at Whittier Narrows Recreation Area Tennis Center pursuant to this Agreement. Nothing, however, herein contained shall be construed to extend to any incorporated company, if said Agreement is for the general benefit of such corporation or company.

2.0 DEFINITIONS

- 2.1 The headings herein contained are for convenience and reference only and are not intended to define or limit the scope of any provision thereof.
- 2.2 The following words as used herein shall be construed to have the following meaning, unless otherwise apparent from the context in which they are used:
 - 2.2.1 **Agreement Year:** the 365 day period commencing on the day of the approval of this agreement by the Board of Supervisors which date shall become the effective date of this agreement and each following 365 day period thereafter throughout the term of this agreement.
 - 2.2.2 **Approval or Disapproval by the Director:** notification in writing that the subject matter under review by the Director has been approved, disapproved or approved on the conditions stated.
 - 2.2.3 **Auditor-Controller:** the Auditor-Controller of the County of Los Angeles or an authorized representative thereof.
 - 2.2.4 **Building Official:** The Director of the County of Los Angeles Department of Public Works or an authorized representative thereof.
 - 2.2.5 **Concession:** the privilege of engaging in the commercial activities authorized herein on the public property designated therefor.

2.2.6 **County:** the County of Los Angeles.

2.2.7 **Director:** the Director of the County of Los Angeles Department of Parks and Recreation or an authorized representative thereof.

2.2.8 **District Engineer:** the District Engineer of the United States Army Corps of Engineers, Los Angeles District, his authorized representative, or his successor in interest.

2.2.9 **Gross Receipts:**

- a. Except as specifically provided by policy statement issued by the Director, the term "gross receipts" as used in this Agreement, is defined to be all money, cash receipts, assets, property or other things of value, including but not limited to gross charges, sales, rentals, fees and commissions made or earned by Concessionaire and/or all the assignees, sublessees, licensees, permittees or concessionaires thereof, whether collected or accrued from any business, use or occupation, or any combination thereof, originating, transacted or performed in whole or in part, on the concession premises, including but not limited to rentals, the rendering or supplying of services and the sale of goods, wares or merchandise.
- b. Except as specifically provided below or by policy statement issued by Director, there shall be no deduction from gross receipts for any overhead or cost or expense of operations, such as, but without limitation to salaries, wages, costs of goods, interest, debt amortization, credit, collection costs, discount from credit card operations, insurance and taxes. Bona fide bad debts actually incurred by Concessionaire or its sublessees, assignees, licensees, concessionaires and permittees may be deducted from gross receipts. There shall, however, be no deduction for bad debts based on past experience or transfers to a bad debt reserve. Subsequent

collection of bad debts previously not reported as gross receipts shall be included in gross receipts at the time they are collected.

- c. Except as specifically provided below or by policy statement, gross receipts reported by Concessionaire and its sublessees, assignees, licensees, concessionaires and permittees, must include the full usual charges for any services, goods, rentals or facilities provided by Concessionaire or its sublessees, assignees, licensees, concessionaires or permittees. Gross receipts shall not include direct taxes imposed upon the consumer and collected therefrom by the Concessionaire such as, but not limited to, retail sales taxes, excise taxes, or related direct taxes, which are direct taxes paid periodically by Concessionaire to a governmental agency accompanied by a tax return statement.
- d. The Director, by policy statement, consistent with recognized and accepted business and accounting practices, and with the approval of Auditor-Controller and County Counsel, may further interpret the term "gross receipts" as used in this Agreement.

2.2.10 Gross Sales Price: the total consideration resulting from the transfer of Concessionaire's interest in the concession, or portion thereof, determined by the total cash payments and the market value of all non-cash consideration, including, but not limited to, stocks, bonds, deferred payments, secured and unsecured notes, and forbearances regarding claims and judgments.

2.2.11 State: the State of California.

3. CONCESSION GRANTED

- 3.1 Concessionaire is hereby authorized and required to operate and maintain a tennis center concession, establish a premiere junior tennis program, offer four (4) free Demo-Day clinics; to sell clothing, equipment, and other miscellaneous merchandise relevant to tennis services and activities; to rent and repair tennis equipment; to collect

monthly/annual membership fees for court usage; to provide and charge for the provision of tennis instructional services; to collect fees for tournament participation; to collect fees for court usage; and to sell prepackaged food and non-alcoholic beverages. Concessionaire shall sell the same beverage product line as is provided by the Department's official beverage vending provider. Concessionaire may also sell beverage types not provided by the Department's official beverage vending provider.

3.2 The concession is granted subject to the rights reserved by the Government, its officers, agents and employees in the master lease, to enter the concession premises at any time and for any purpose necessary or convenient in connection with river, harbor and flood control work, and to remove timber or other material required for such work; to flood the concession premises when necessary, and/or to make any other use of the land as may be necessary in connection with flood control, and Concessionaire shall have no claim for damages of any character on account thereof against the Government or any agent, officer or employee thereof; to make inspections concerning the operation and maintenance of the concession granted; to prohibit any permanent type of recreation building or accessory facilities on the concession premises below twenty-five year (25) flood frequency elevations, as determined by the Government, and limit any such improvement to open type structures between twenty-five (25) and fifty (50) year flood frequency elevations, as determined by the Government.

3.3 The privilege granted hereby shall be exclusive within the confines of the concession premises as shown in Exhibit B, but is nonexclusive with respect to the remainder of Whittier Narrows Recreational Area and shall not preclude the granting of other concessions providing for the needs of the public at the remainder of Whittier Narrows Recreational Area.

- 3.4 Concessionaire understands and agrees that this Agreement is by license and not lease; confers only permission to occupy and use the concession premises described for prescribed purposes in accordance with the terms and conditions hereinafter specified without granting or reserving to Concessionaire any interest or estate therein; the expenditure of capital and/or labor in the course of use and occupancy thereunder shall not confer any interest or estate in the premises by virtue of said use, occupancy and/or expenditure of money thereon; and it is the intention of the parties to limit the right of use granted herein to a personal, revocable and unassignable privilege of use in the premises for the concession granted herein.

4. CONCESSION PREMISES

- 4.1 The concession shall be conducted within the Whittier Narrows Recreation Area Tennis Center, as shown on the attached Exhibit B, that is hereby licensed, let and hired to Concessionaire for the use in the concession granted herein.
- 4.2 The concession premises shall be used only and exclusively for purposes authorized herein, and such other purposes as are related thereto provided express approval therefore is granted by the Director, and for no other purposes whatsoever.
- 4.3 Concessionaire acknowledges personal inspection of the concession premises and the surrounding area and evaluation of the extent to which the physical condition thereof will affect its operations. Concessionaire accepts the concession premises in their present physical condition, and agrees to make no demands upon County for any improvements or alterations thereof.
- 4.4 Any improvements, additions, alterations, or changes to the concession premises shall be subject to: prior approval by the Army Corps of Engineers and Director of the Parks and Recreation; securing of applicable permits; and compliance with such terms and conditions

as may be imposed by the Director and the Army Corps of Engineers. Any construction shall be at Concessionaire's expense.

4.5 Concessionaire hereby acknowledges the title of the United States of America, County, and/or any other public agencies having jurisdiction thereover, in and to the premises and the improvements located thereon, and covenants and agrees never to assail, contest or resist said title.

4.6 Ownership of all structures, buildings or improvements constructed by Concessionaire upon the concession premises and all alterations, additions or betterment's thereto, shall become the property of the County without compensation being paid therefor, subject to the rights granted to the Concessionaire hereinabove. Upon termination thereof, whether by expiration of the term, cancellation, forfeiture or otherwise, the Director or Los Angeles District Army Corps of Engineers may require the Concessionaire to remove said structures, buildings and/or improvements upon written notice ninety (90) days prior to the date of termination of this Agreement. Should Concessionaire fail to remove said structures, buildings and improvements, same may be sold, removed or demolished, and Concessionaire shall reimburse County for any cost or expense in connection therewith in excess of any consideration received by County as a result of said sale, removal or demolition.

5.0 TERM OF CONTRACT

5.1 The term of the Concession shall be for a period of five (5) years commencing upon the approval of this Agreement by County's Board of Supervisors.

5.2 The term of this Concession may be extended by the Director for a period of two (2) years, provided: 1) the Concessionaire has satisfactorily completed, as confirmed by the Director, the required capital improvements identified in Exhibit C-1 of this Agreement; and

2) the Concessionaire is in compliance with all other provisions of this Agreement.

- 5.3 In the event Concessionaire holds over beyond the term herein provided with the consent, expressed or implied of County, such holding shall be from month to month only, not to exceed six (6) months, and subject to the conditions of this Agreement. This holdover shall not be a renewal thereof and shall be at the monthly compensation provided herein.

6.0 CONSIDERATION

- 6.1 Concessionaire shall pay County for the concession and the use granted herein a monthly amount that shall be equal to the greater of the sum of percentages of monthly gross receipts hereinafter provided or the monthly minimum amount of Two Thousand Five Hundred Dollars (\$2,500).
- 6.2 The percentages of monthly gross receipts to be used in the determination of said monthly payments shall be as provided in the schedule immediately hereinafter: ten percent (10%) of the monthly gross receipts from the sales of pre-packaged food and non-alcoholic beverages; five percent (5%) of the monthly gross receipts from the sales of tennis related merchandise; ten percent (10%) of the monthly gross receipts derived from the repair or rental of tennis equipment and any other miscellaneous sales; fifteen percent (15%) of the monthly gross receipts derived from tennis instructions; one dollar (\$1) per entrant for tennis tournaments; ten (10%) of the monthly gross receipts derived from the daily fees collected for tennis court use; and five percent (5%) of the monthly gross receipts derived from the monthly and/or annual membership fees collected for court use.
- 6.3 When the Director and Concessionaire find that with regard to a particular activity not otherwise provided for herein, the Director may authorize said activity and establish a percentage of gross receipts and/or a minimum amount as payment for the privilege of engaging

therein. Said percentage and/or minimum amount shall be set by mutual consent of the Director and Concessionaire and shall be reasonable in accordance with the revenue to be generated therefrom.

- 6.4 Payment shall be made to the Department on or before the fifteenth (15th) day of the calendar month following each month of the term of this Agreement. Payment shall be by check or draft and made payable to the County of Los Angeles Department of Parks and Recreation. Payment shall be mailed or otherwise delivered to the Treasurer/Tax Collector, P.O. Box 54927, Los Angeles, California 90054-0927. A late payment charge of two percent (2%) per month shall be added to any late payment received by the Treasurer-Tax Collector. However, the late payment charge herein provided may be waived, whenever the Director finds the late payment excusable by reason of extenuating circumstances. At no time during the term of this Agreement shall the County be obligated to notify the Concessionaire of the accumulation of late payment charges.

- 6.5 Upon approval of this Agreement, the County's Auditor-Controller shall establish an interest-bearing Trust Fund for Whittier Narrows Tennis Center (Fund). The Fund shall name, and be administered by, the County as the sole trustee in order to provide for continued funding for capital improvement projects, other than those required in Exhibit C and Exhibit C-1, at the Whittier Narrows Tennis Center. The County shall deposit Five Hundred Dollars (\$500) of the Concessionaire's total monthly payment in the Fund. The distribution of monies deposited and interest earned thereon shall be: (a) used exclusively at Whittier Narrows Tennis Center and (b) disbursed at the discretion of the Director pursuant to Sub-Section 10.12 hereinafter. At the termination of this Agreement, all unexpended monies shall be retained by the County.

7.0 CHANGES AND AMENDMENTS

- 7.1 The County's Board of Supervisors or its designee may require the addition and/or change of certain terms and conditions in the Agreement during the term of this Agreement. The County reserves the right to add/or change such provisions as required by the County's Board of Supervisors. To implement such orders, an Amendment to the Agreement shall be prepared and executed by the Director and Concessionaire.
- 7.2 Notwithstanding the above, this document may be modified only by further written agreement between the parties. Any such modification shall not be effective unless and until executed by Concessionaire and in the case of County, until approved by County's Board of Supervisors and executed by the Chairman thereof.

8.0 ACCOUNTING RECORDS

- 8.1 All sales shall be recorded by means of cash registers which publicly display the amount of each sale and automatically issue a customer's receipt or certify the amount recorded on a sales slip. Said cash registers shall in all cases have locked-in sales totals and transaction counters which are constantly accumulating and which cannot, in either case, be reset. In addition, such cash registers must have a tape located within the register upon which transaction numbers and sales details are imprinted. Beginning and ending cash register readings shall be made a matter of daily record. In the event of a technical or electrical failure of the cash registers, Concessionaire shall record by hand all collections, and issue a sequentially pre-numbered customer's receipt in like manner.
- 8.2 Concessionaire shall maintain a method of accounting that shall, to the satisfaction of the Auditor-Controller, correctly and accurately reflect the gross receipts and disbursements of Concessionaire in connection with the operation. The method of accounting, including bank accounts, established for said operation shall be separate from the

accounting system used for any other business operated by Concessionaire or for recording Concessionaire's personal financial affairs. Such method shall include the keeping of the following documents:

- a. Regular books of accounting such as general ledgers;
- b. Journals including any supporting and underlying documents such as vouchers, checks, tickets, bank statements, etc.;
- c. State and Federal income tax returns and sales tax returns and checks and other documents providing payment of sums shown which shall be kept in confidence by County;
- d. Cash register tapes (daily tapes may be separated but shall be retained so that from day to day the sales and/or rentals can be identified);
- e. Any other accounting records that the Auditor-Controller deems necessary for proper reporting of receipts;

8.3 All documents, books and accounting records shall be open for inspection and reinspection at any reasonable time during the term of this Agreement and for twelve (12) months thereafter. In addition, the County may from time to time conduct an audit and reaudit of the books and business conducted by Concessionaire and observe the operation of the business so that accuracy of the above records can be confirmed. All information obtained in connection with the County's inspection of records or audit shall be treated as confidential information and exempt from the public disclosure thereof to the extent permitted under the California Public Records Act.

8.4 Concessionaire shall furnish the Director with a monthly gross receipts report showing the amount payable therefrom to the County. Such a report shall accompany each minimum rent or percentage rent payment required to be made as provided herein. The monthly reporting period shall be by calendar month rather than monthly anniversary date of the effective date of this Agreement. In addition

thereto, Concessionaire shall furnish an annual profit and loss statement and a balance sheet prepared by a person and in a form acceptable to the County. The annual profit and loss statement shall be submitted within sixty (60) days of the close of the calendar year.

8.5 In the event that an audit or review conducted by the Auditor-Controller and/or Director finds that, due to Concessionaire's non-compliance with its obligation to report gross receipts received in connection with its operations authorized herein, an actual loss and/or a projected loss of revenue to County can be determined, Director may, at his option, (1) bill Concessionaire for said losses, said amount to be paid to County within thirty (30) days following billing therefor unless otherwise specified by Director; and/or (2) use the Security Deposit as provided for herein; and/or, (3) assess liquidated damages. The parties agree that it will be impracticable or extremely difficult to fix the extent of actual damages resulting from the failure of the Concessionaire to correctly report gross receipts, and a projected loss of revenue due to County. The parties hereby agree that under the current circumstances a reasonable estimate of such damages is One Hundred Dollars (\$100.00) per day for each day of the loss period as determined by County, and that the Concessionaire shall be liable to the County for liquidated damages in said amount.

- Should the Director find that the additional rental payment due to County exceeds two percent (2%) of the total amount which should have been paid as determined by such review or audit and observation, and there being no reasonable basis for the failure to report and pay thereon, Concessionaire shall also pay the cost of the audit as determined by County and pay any penalty heretofore provided for the delinquent payments.

8.6 Concessionaire shall cause all of its sub-lessees to comply with these requirements except that a sub-lessee shall only be required to establish and maintain those accounting records that the Auditor-

Controller deems necessary to examine the reported gross receipts in accordance with generally accepted auditing standards.

9.0 REQUIRED CONSTRUCTION

- 9.1 Contractor shall provide for the construction, refurbishment, replacement, installation, and/or landscaping of fixtures, hereinafter identified as the "Improvements", upon the concession premises as identified in Exhibit C, and Exhibit C-1, attached hereto and incorporated herein by reference.
- 9.2 Any construction or refurbishment undertaken by the Contractor pursuant to Section 9, Required Construction, shall be subject to the requirements and procedures of Section 10, Improvements.

10.0 IMPROVEMENTS

- 10.1 Approvals: Any proposed improvement undertaken by the Concessionaire, including but not limited to construction of utilities, resurfacing the courts, landscape planting, replanting or removal, irrigation, site improvements such as paths, walkways, benches, lighting, parking lots, demolition, relocation or replication of existing structures, and construction of new structures, shall have the prior written approval of the District Engineer and the Director. Notice of a proposed improvement project shall be provided to the Director in writing and shall include sufficient detail regarding proposed scope, cost estimate, time frame and proposed funding for the project. The Director will then forward a copy of said notice to the District Engineer. Written approval, or the estimated time required to provide such approval, shall be provided to the Concessionaire within 30 days of receipt of all necessary documents.
- 10.2 Funding: Unless otherwise approved by the Director in writing, all funds for the costs of any improvement, inclusive of costs of performance and payment bonds and the costs of any permits, shall be solely the responsibility of the Concessionaire. The Director agrees to consult with the Concessionaire, as requested, with regard to the feasibility of public-assisted financing methods in connection with proposed capital improvements.

10.3 Plan Preparation:

- 10.3.1 The Concessionaire shall ensure that all improvement plans are prepared by qualified professionals such as architects, engineers, and landscape architects who are licensed by the State of California and are approved in advance by the Director. In addition, the Concessionaire shall be required to utilize the services of an experienced construction management consultant in connection with any project performed hereunder, unless otherwise agreed to in writing by the Director.
- 10.3.2 For projects requiring the issuance of a permit, Concessionaire shall prepare and submit two (2) sets of a preliminary design for review and approval by the Director. The Director will forward one set of the preliminary design to the District Engineer for review and approval. Within forty-five (45) days following approval of the preliminary design by the District Engineer and the Director, Concessionaire shall prepare and submit three (3) sets of working drawings for review and approval: two (2) sets shall be submitted to the Director and one set shall be submitted to the Building Official. The Director will forward one set of the working drawings to the District Engineer for review and approval. Should the Building Official require Concessionaire to make changes to the plans, Concessionaire shall make necessary changes and re-submit the plans to the Building Official as soon as possible, however, no later than 30 days. Upon approval thereof, said working drawings shall be incorporated herein by reference. Elements included in the approved design development shall not be subsequently disapproved in review of the working drawings. Concessionaire shall, within 30 days after approval of the working drawings as provided herein, and causing the posting of the construction site with a notice of non-responsibility of County for payment for the

works of improvement, commence construction of the above-described improvements and shall diligently prosecute and complete same.

- 10.4 Contract Approval: Copies of all agreements for projects requiring the issuance of a building permit between Concessionaire and the Concessionaire's architects, engineers, and contractors shall be furnished to and consented to in writing by the Director. The Director's consent shall not be unreasonably withheld.
- 10.5 Environmental Impacts: The Concessionaire shall coordinate environmental impact issues with the Director in compliance with the California Environmental Quality Act ("CEQA") and shall receive written approvals and authorizations from Director. The Concessionaire shall, however, maintain full responsibility for implementing all CEQA and related requirements.
- 10.6 Construction Management: The Concessionaire and/or its construction manager shall maintain responsibility for conducting regularly scheduled site inspections and job meetings and shall notify the Director of same. The Director will notify the District Engineer. Documentation of these meetings shall be maintained by the Concessionaire and be available for review by Corps or Department staff.
- 10.7 Completion of Improvements: The improvements requiring the issuance of a permit shall be deemed to be complete upon acceptance of the improvements by the Building Official as evidenced by the issuance of a certificate of occupancy and completion of punch list items and tenant improvements in areas to be subleased.
- 10.8 Plans of Record: Upon completion of the improvements, Concessionaire shall furnish the Director with one (1) complete set of "plans of record" working drawings; one (1) complete set of "plans of record" working drawings in AutoCADD and on CD (all circuit breakers, mechanical equipment, switches, plumbing and fire sprinkler section and main valves shall be plainly labeled and a master index shall be provided); operating

manuals for all building equipment and systems; and copies of all written warranties. Concessionaire shall assign to County all expressed warranties furnished by other persons in connection with the provision of labor and/or material to the works of improvement covered by this Agreement upon termination of this Agreement by expiration of term or cancellation.

10.9 Performance Bond: In connection with any improvement project performed hereunder, Concessionaire shall, at its own cost, obtain or require its contractor to obtain a performance bond from an admitted California surety, in good standing, in an amount equal to one hundred percent (100%) of the construction cost of the improvement, unless the Director otherwise agrees in writing. Said performance bond must be satisfactory to the County and shall name the County of Los Angeles and the Concessionaire as obligees.

10.10 Prevailing Wages: In connection with any capital improvement performed hereunder, the Concessionaire shall comply with and shall require all of its contractors to comply with all provisions of the Labor Code of the State of California, including but not limited to, the payment of prevailing wages to all persons providing labor on any such project.

10.11 Compliance With All Laws and Building Codes: The Concessionaire shall comply with and require its contractors to comply with all applicable laws, including Building Code requirements in connection with any projects performed hereunder.

10.12 Trust Fund Expenditures:

10.12.1 It is expressly understood by County and Concessionaire that any and all distributions from said Fund shall be used exclusively for continued funding of capital improvement projects, other than those required in Exhibit C and Exhibit C-1 of this Agreement, at the Whittier Narrows Tennis Center.

10.12.2 Upon final approval by the District Engineer and the Director of the plans, specifications and construction cost estimates for

capital improvement(s), the Director will authorize the issuance of a warrant to Contractor in the amount of ninety percent (90%) of the construction cost estimate. Upon completion of the capital improvement(s) and acceptance by the Director, said officer shall authorize the issuance of a warrant to the Contractor in the amount of the remaining balance of the actual construction cost.

10.12.3 The monies deposited and accumulated in the Fund shall at all times be administered by the County as trustee. At the termination of the agreement, all unexpended funds shall be retained by the County and deposited in the Special Development fund for Whittier Narrows Recreation Area Equestrian Center.

10.13 Insurance: Upon review by and consultation with County's Risk Manager, Concessionaire shall provide such insurance coverage as Director deems necessary for the completed construction project.

10.14 Additional Provisions: It is contemplated that the County may impose additional obligations on the Concessionaire with respect to particular capital improvement projects performed hereunder and such additional requirements may be set forth in a separate writing signed by the Concessionaire and the Director on behalf of the County.

11.0 SECURITY DEPOSIT

11.1 Prior to the commencement of this Agreement, Concessionaire shall pay to the Director the sum of Seven Thousand Five Hundred Dollars (\$7,500). In lieu thereof, Concessionaire may deposit said amount in a bank whose deposits are insured under the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) or a savings and loan institution whose deposits are insured under Title 4 of the National Housing Act (12 U.S.C. 1724 et seq.), provided that a certificate of deposit is delivered to the Director giving County the exclusive right to withdraw any or all

of said amount during the term of this Agreement. Concessionaire shall be entitled to any and all interest accruing from said certificate of deposit.

11.2 Said Deposit shall serve as security for faithful performance of all covenants, promises and conditions assumed herein by Concessionaire, and may be applied in satisfaction and/or mitigation of damages arising from a breach thereof, including, but not limited to, delinquent payments; correction of maintenance deficiencies; securing required insurance; loss of revenue due to abandonment, vacation or discontinuance of concession operations; discrimination; refunding of deposits for scheduled future events which are required to be canceled due to abandonment, vacation or discontinuance of concession operations; a breach of obligations assumed by Concessionaire herein with respect to the requirements therefore by County, including the payment of mechanic's liens. Application of amounts on deposit in satisfaction and/or mitigation of damages shall be without prejudice to the exercise of any other rights provided herein or by law to remedy a breach of this Agreement.

11.3 In the event any or all of said amount is applied in satisfaction and/or mitigation of damages Concessionaire shall immediately deposit such sums as are necessary to restore the Security Deposit to the full amount required hereunder.

11.4 Said Deposit shall be returned to Concessionaire upon termination of this Agreement less any amounts that may be withheld therefrom by County as heretofore provided.

12.0 DESTRUCTION OF THE CONCESSION PREMISES AND/OR WHITTIER NARROWS RECREATION AREA

12.1 In the event the concession premises shall be totally or partially destroyed by a risk covered by the insurance coverage required herein, Concessionaire shall either restore the premises or terminate this Agreement. If the destruction is from a risk for which coverage is

not required or provided under said policy of insurance, County shall either restore the premises or terminate this Agreement. County shall make the loss adjustment with the insurance company insuring the loss and receive payment of the proceeds of insurance. Said insurance proceeds, if any, shall be held for the benefit of Concessionaire only in the event of an election by Concessionaire to restore the premises and shall be disbursed in installments as construction progresses for payment of the costs of restoration upon satisfactory performance of the work required, as evidenced by certification of completion by the Director and release of mechanic's liens by all persons furnishing labor and materials thereon. If the proceeds of insurance are insufficient to pay the actual costs of restoration, Concessionaire shall deposit the amount of the deficiency with the County upon demand therefor by the Director, and said sums shall be held for payment of said costs and disbursed in the manner heretofore provided. Any undistributed funds shall be retained by County and credited to the rental reserved over the remaining term of this Agreement. In the event Concessionaire elects to restore the concession premises, plans, specifications, and construction cost estimates for the restoration thereof shall be prepared by Concessionaire and forwarded to Director for approval prior to the performance of any work thereon. Said documents shall be prepared and submitted in a timely manner following adjustments of the loss and receipt of the proceeds of insurance by County. The required construction shall be performed by Concessionaire and/or licensed and bondable contractor(s) thereof who shall be required to carry comprehensive liability and property damage insurance, workers' compensation insurance, and standard fire, and extended coverage insurance, with vandalism and malicious mischief endorsements, during the period of construction, in amounts equal to the insurance limits required herein, or as otherwise determined by the County. Said

construction shall be commenced promptly following the approval thereof by the Director, issuance of permits therefor by governmental agencies having jurisdiction thereover, and posting of the construction site by County with notice of non-responsibility, and shall be diligently prosecuted to completion. All work shall be performed in accordance with the approved plans and specifications, unless changes therein are approved in advance thereof by Director. Concessionaire agrees that County may have on the site at any time during the construction period an inspector who shall have the right of access to the concession premises and the work occurring thereon. Concessionaire, at the commencement of the construction work, shall notify Director in writing of the identity, place of business, and telephone number of responsible person(s) in charge of the construction to be occurring thereon. All construction shall be performed in a good and workmanlike manner. Upon completion of the restoration, Concessionaire shall immediately record a notice of completion with the Registrar-Recorder.

- 12.2 If the premises are restored, this Agreement shall continue in full force and effect, except that the payment to be made by Concessionaire shall be abated and/or other relief afforded to the extent that the Director may determine the damage and/or restoration interferes with the concession operation provided a claim therefor is filed with the Director within one hundred (100) days of notice of election to restore the premises. Any such claim shall be denied if the destruction of the concession premises is found by the Director to have been caused by the fault or neglect of Concessionaire. Concessionaire agrees to cooperate in the determination of the abatement and/or other relief to be provided by furnishing all information requested relative to the concession operation, and permitting examination and audit of all accounting records kept in connection with the conduct thereof.
- 12.3 Concessionaire shall cooperate in the restoration of the concession premises by vacating and removing therefrom all items of inventory,

trade fixtures, equipment and furnishings for such periods as are required for the restoration thereof.

12.4 The aforesaid provisions for abatement and/or other relief shall also be applicable to a total or partial destruction of Whittier Narrows Recreation Area by the aforementioned causes, except that the relief to be provided shall be based upon the extent the Director may determine that the reduction in the public's use of said park due to the partial or total closure thereof has affected the concession.

12.5 Concessionaire agrees to accept the remedy heretofore provided in the event of a destruction of the concession premises and/or Whittier Narrows Recreation Area and hereby waives any and all additional rights and remedies for relief or compensation that are presently available or may hereafter be made available under the laws and statutes of this State.

13.0 CONSTRUCTION BY COUNTY AFFECTING CONCESSION PREMISES AND/OR WHITTIER NARROWS RECREATION AREA

13.1 In the event County shall construct or cause to be constructed a new facility for the concession, this Agreement shall continue in full force and effect, except that the payments to be made by Concessionaire shall be abated and/or other relief afforded to the extent that the Director may determine the construction interferes with the authorized operations, provided a claim therefor is filed with the Director within one hundred (100) days of commencement of construction.

13.2 Concessionaire agrees to cooperate with County in the event the construction affects the concession premises by vacating and removing therefrom all items of inventory, trade fixtures, equipment and furnishings for such periods as are required by the construction of the new facilities. Concessionaire further agrees to cooperate in the determination of the abatement and/or other relief to be provided by furnishing all information requested relative to the operation and

permitting examination and audit of all accounting records kept in connection with the conduct thereof.

- 13.3 Following completion of the new facility, Concessionaire shall resume its operations therefrom within thirty (30) days of written notice from the Director that the concession premises are tenantable.
- 13.4 The aforementioned provisions of this section shall also be applicable in the event of performance of work at the Whittier Narrows Recreation Area that requires a partial or total closure thereof, except that the abatement and/or other relief to be provided shall be based upon the extent the Director may determine that the reduction in the public's use of the Whittier Narrows Recreation Area due to the partial or total closure thereof, has affected the Concessionaire's operations.
- 13.5 Concessionaire agrees to accept the remedy heretofore provided in the event of construction upon the concession premises and/or the Whittier Narrows Recreation Area, and hereby waives any and all additional rights and remedies for relief or compensation that are presently available or may be made available hereafter under the laws and statutes of this State.

14.0 OPERATING RESPONSIBILITIES

14.1 Advertising and Promotional Materials

Concessionaire shall not promulgate nor cause to be distributed any advertising, or promotional materials unless prior approval thereof is obtained from Director. Said approval shall not be unreasonably withheld or delayed and shall be deemed to be given if no objection is made within fifteen (15) days following the request for approval. Such materials include, but are not limited to, advertising in newspapers, magazines and trade journals, and radio and/or television commercials.

14.2 Compliance with Laws, Rules and Regulations

Concessionaire shall conform to and abide by all municipal and County ordinances, and all State and Federal laws and regulations,

insofar as the same or any of them are applicable; and where permits and/or licenses are required for the concession, any related activity, and/or construction authorized herein, the same must be first obtained from the regulatory agency having jurisdiction thereover. Further, Concessionaire shall conform to and abide by all rules and regulations and policies of the County's Board of Supervisors, the Director of the Department of Parks and Recreation, and any other County agencies insofar as the same or any of them are applicable.

14.3 Concessionaire's Staff and Employment Practices

14.3.1 Concessionaire shall maintain adequate and proper staffing for its tennis center operations at all times. Concessionaire shall designate an Operations Manager with whom County may deal with on a daily basis. The Operations Manager shall be skilled in the management of businesses similar to the concession operation and shall be subject to approval by the Director. The Operations Manager shall devote substantial time and attention to the operation authorized herein and render such services and convenience to the public as are required. The Operations Manager shall be fully acquainted with the concession operation, familiar with the terms and the conditions prescribed therefor by this Agreement, and authorized to act in the day-to-day operation thereof.

14.3.2 The Director may at any time give Concessionaire written notice to the effect that the conduct or action of a designated employee of Concessionaire is, in the reasonable belief of the Director, detrimental to the interest of the public patronizing the concession premises. Concessionaire shall transfer or reassign any such employee within a reasonable period of time following notice thereof from the Director, and such employee shall not be assigned to any other County Department of Parks and Recreation facility.

14.3.3 The Concessionaire warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this contract meet the citizenship or alien status requirements set forth in Federal and State statutes and regulations. The Concessionaire shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal and State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, (P.L. 99-603), or as they currently exist and as they may be hereafter amended. The Concessionaire shall retain all such documentation for all covered employees for the period prescribed by law. The Concessionaire shall indemnify, defend and hold harmless, the County, the United States Army Corps of Engineers, and the County of Los Angeles Flood Control District, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Concessionaire or County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this contract.

14.4 Credit in Promotional Materials

Concessionaire agrees that any advertising or promotional materials promulgated by Concessionaire which contain the words "Whittier Narrows Recreation Area" or any derivative thereof, shall also include the phrase "a unit of the County of Los Angeles Department of Parks and Recreation System" unless specifically approved otherwise by the Director.

14.5 Days and Hours of Operation

Concessionaire shall keep the concession open daily, including Sundays and holidays, except during periods of inclement weather and on Christmas Day. The minimum hours of operation shall be 9:00 a.m. to 9:00 p.m. each day that the concession is required to be open. Concessionaire shall comply with the approved schedule of days and hours of operation until authorization to deviate from said schedule is obtained from the Director.

14.6 Department Use of Concession Premises

Notwithstanding Paragraph 3.3 of this Agreement, the Department reserves the right to schedule the use of the concession premises for special events sponsored by the Department. Specific dates and the areas to be used shall be arranged with the Contractor. County shall be responsible for repairing any damage, except for normal wear and tear, to the concession premises while conducting said activities.

14.7 Disorderly Persons

Concessionaire agrees to exercise every reasonable effort to not allow any loud, boisterous or disorderly persons about the concession premises.

14.8 Easements

County reserves the right to establish, grant or utilize easements or rights of way over, under, along and across the concession premises for utilities and/or public access provided that County shall exercise such rights in a manner as will avoid any substantial interference with the operations to be conducted hereunder. Should the establishment of such easements permanently deprive Concessionaire of the use of a portion of the concession premises, an abatement of payments shall be provided in an amount proportional to the total area of the premises in the before and after conditions.

14.9 Habitation

The concession premises shall not be used for human habitation, other than a night watchman or patrolman approved by the Director.

14.10 Illegal Activities

Concessionaire shall not knowingly permit any illegal activities to be conducted upon the concession premises.

14.11 Maintenance

14.11.1 Concessionaire shall be responsible for maintaining the Concession Premises in good and substantial repair and condition, except that County shall be responsible for maintaining the roof; exterior walls (excluding painting), concealed utility lines, heating and air conditioning systems, and replacing court fencing. Maintenance shall include mowing of the turf area, removal of graffiti, sweeping and/or washing of court surfaces and concrete walkways, daily maintenance of the pro shop interior, and all repairs to and replacement of all improvements and equipment thereof, including the painting thereof, upon written request therefor by the Director. In addition to this general requirement, Concessionaire shall perform any and all repairs required for the maintenance thereof in compliance with all laws applicable thereto; replace broken window glass; replace interior lights; repair pro shop plumbing, flooring and lighting fixtures; resurface the tennis courts; repair or replace windscreens; provide replacement bulbs for tennis court lighting; repair and replace tennis nets on all courts; repair and replace tennis net hardware, excluding support posts, on all courts; and repair or replace broken or damaged doors. Additionally, and notwithstanding the exemption from exterior maintenance heretofore provided, concessionaire shall be responsible for repairing damage to the exterior of the facility caused by

malicious mischief, vandalism or burglary of the tennis center. All maintenance shall be commenced within thirty (30) days of the need thereof and diligently prosecuted to completion of same, except where the state of disrepair is such that an emergency or hazard is created thereby in which event there shall be an immediate correction thereof.

- 14.11.2 Either party may cure the default of the other party hereto with respect to the maintenance obligations assumed herein, and upon performance thereof shall acquire a right of reimbursement therefrom for the actual costs of same, including, but not limited to, the cost of labor, materials and equipment furnished in the correction thereof, provided there is prior mutual agreement between Director and Concessionaire upon the nature and scope of the work to be performed and the costs to be incurred thereby. Any demand of County for reimbursement hereunder shall be satisfied by Concessionaire through payment of the sums deposited with County as security for faithful performance, and/or pro rata monthly installments over the remaining term of this Agreement, commencing with the month next succeeding the date of completion of the maintenance performed. Any demand of Concessionaire for reimbursement hereunder shall be satisfied by County through a credit against the monthly rental obligation of Concessionaire, commencing with the month next succeeding the date of completion of the maintenance performed, and for each and every other month of the remaining term of this Agreement, until a total credit has been provided up to the lesser of the actual costs of cure or the rental reserved over said remaining term. County and Concessionaire waive all rights to payment on their respective rights to reimbursement for the actual costs of cure of the

default of the other with respect to the maintenance obligations assumed herein, except in the manner and amounts heretofore provided.

14.12 Merchandise/Food Products

Concessionaire may provide an inventory of concession merchandise required to meet the needs of the public therefor. All food and beverages sold or kept for sale by Concessionaire shall be first-class in quality, wholesome and pure, and shall conform to the Federal, State and County food laws, ordinances and regulations in all respects. No adulterated, misbranded or impure articles shall be sold or kept for sale by Concessionaire, and all merchandise kept on hand by Concessionaire shall be stored and handled with due regard for sanitation. In the event that the Director determines that any merchandise, and/or food products are below first class, the Director shall have the right to order the improvement of the quality of any such items kept or offered for sale.

14.13 Non-Interference

Concessionaire shall not interfere with the public use of and the programming within the Whittier Narrows Recreation Area.

14.14 Prices

Concessionaire shall at all times maintain a complete list or schedule of the prices collected for all fees, charges, goods, rentals, and services, or combinations thereof, supplied to the public on or from the concession premises. The Director hereby reserves the right to review and approve said fees and charges. Said prices shall be fair and reasonable based upon the following considerations: that the concession is intended to serve the needs of the public for the goods and/or services supplied at a fair and reasonable cost; comparability with prices charged for similar goods and/or services supplied in the Los Angeles Metropolitan Area; and reasonableness of profit margin in view of the cost of providing same in compliance with the obligations

assumed in this Agreement. In the event the Director notifies Concessionaire that prices being charged are not fair and reasonable, Concessionaire shall have the right to confer with the Director and justify said prices. Following reasonable conference and consultation thereon, Concessionaire shall make such price adjustments as may be ordered by the Director. Concessionaire may appeal the determination of the Director to the Board of Supervisors, whose decision thereon shall be final and conclusive. However, Concessionaire shall comply with the ordered price adjustment pending the appeal and final ruling thereon by the Board of Supervisors.

14.15 Programmed Events

Concessionaire shall not promote or sponsor private or public events requiring the use of the Whittier Narrows Recreation Area. However, this provision shall not prohibit Concessionaire from generally advertising or encouraging public use of the Whittier Narrows Recreation Area.

14.16 Promoting Interest in Tennis

Concessionaire shall promote interest in the playing of tennis at the Whittier Narrows Tennis Center by employing methods that include but are not limited to, advertising, offering reduced-rate instruction fees, and conducting tennis clinics for juniors.

14.17 Quality of Goods and Services

Service to the public, with goods, services, and merchandise of the best quality and at reasonable charges, is of prime concern to County and is considered a part of the consideration for this Agreement. Therefore, Concessionaire agrees to operate and conduct its concession operation in a first-class manner, and comparable to other first-class facilities providing similar activities, programs and services. Concessionaire shall furnish and dispense foods and beverages of the best quality and shall maintain a high standard of service at least equal

to that of similar events and programs conducted on County parks and/or adjacent communities and to those prevailing in such areas for similar products and services, and without discrimination. Concessionaire, following receipt of written notification therefor, shall immediately withdraw or remove from sale any goods or services which may be found objectionable to the Director based on findings that the provision of such goods or services are harmful to the public welfare.

14.18 Safety

Concessionaire shall immediately correct any unsafe condition of the concession premises, as well as any unsafe practices occurring thereon. Concessionaire shall obtain emergency medical care for any member of the public who is in need thereof, because of illness or injury occurring on the concession premises. Concessionaire shall cooperate fully with County in the investigation of any accidental injury or death occurring on the concession premises, including a prompt report thereof to the Director. Concessionaire shall cooperate and comply fully with County, State, municipal, federal or any other regulatory agency having jurisdiction thereover, regarding any safety inspections and certifications of any and all Concessionaire's structures, enclosures, vehicles, booths, equipment and rides.

14.19 Sanitation

No offensive matter or refuse, or substance constituting an unnecessary, unreasonable or unlawful fire hazard, or material detrimental to the public health, shall be permitted or remain on the Concession Premises. Concessionaire shall prevent the accumulation of trash and debris for a distance of fifty (50) feet from the Concession Premises. Concessionaire shall provide that all refuse is collected as often as necessary, and in no case less than once a week, and shall pay all charges which may be made for the removal thereof. Concessionaire shall furnish all equipment and materials necessary,

including trash receptacles of the size, type, color and number required by the Director, to maintain the Concession Premises and the area within a distance of fifty (50) feet thereof in a sanitary condition. Public restrooms and locker rooms shall be cleaned on a daily basis.

14.20 Security Devices

Concessionaire, at its own expense, may provide any legal devices or equipment and the installation thereof, designated for the purpose of protecting the concession premises from theft, burglary or vandalism, provided written approval for the installation thereof is first obtained from the Director.

14.21 Signs

Concessionaire shall not post signs upon premises or improvements thereon unless prior approval thereof is obtained from the Director. Signs shall also be subject to review and control by the District Engineer in accordance with the master lease.

14.22 Tennis Court Use Fees

County hereby reserves the right to establish any and all tennis court reservation and/or use fees schedule. At such time as the County establishes or modifies such court fees, the Director shall advise concessionaire of such action as soon thereafter as reasonably possible. Concessionaire hereby agrees to enforce and comply with said schedule.

14.23 Tennis Instruction

14.23.1 Instruction in the playing of tennis shall be provided by only those instructors whose qualifications therefor have been approved in writing by the Director, and such approval shall not be unreasonably withheld. Individual or group lessons shall be confined to four (4) teaching courts. Additional court(s) may be authorized by the Director. The Director reserves the right to restrict group or individual lessons whenever such program fails to meet a public need

therefore, or becomes detrimental to the public play of tennis at the Whittier Narrows Tennis Center.

14.23.2 Concessionaire agrees that tennis instruction shall be accessible to all age groups. Director reserves the right to review scheduled individual instructions to ensure that are equally accessible to all age groups. Concessionaire shall also promote a Junior Tennis Program through the conduct of Junior Tennis Tournaments and reduced rates for instruction to juniors.

14.24 Tennis Tournaments

Concessionaire is authorized to conduct as many as fifteen (15) tennis tournaments per year. At least four (4) of any such tournaments shall be Junior Tournaments. The remainder may be Open or Invitational. Specific dates, number of courts to be used and tournament entry fees to be collected shall be in compliance with a schedule developed therefore by the concessionaire and thereafter approved by the Director. Such approval shall not be unreasonably withheld or delayed.

14.25 Trade Fixtures

Concessionaire shall provide and install all appliances, furniture, fixtures and equipment that are required for the concession. During the last thirty (30) days preceding the termination of this Agreement, Concessionaire shall remove same from the premises, other than for those items of personality which have been furnished by County or so affixed that their removal therefrom cannot be accomplished without damage to the realty. Should Concessionaire fail to so remove said appliances, furniture, fixtures, equipment, door locks and padlocks within said thirty (30) day period, Concessionaire shall lose all right, title and interest in and thereto, and County may elect to keep same upon the premises or to sell, remove or demolish same. Concessionaire shall reimburse County for any and all costs, as

determined by the Director, incurred in excess of any consideration received from the sale, removal or demolition thereof.

14.26 Utilities

14.26.1 County shall provide and pay for any necessary utilities serving the concession premises excluding telephone service. Concessionaire shall pay for telephone service to the Whittier Narrows Tennis Center. Concessionaire waives any and all claims against County for compensation for loss or damage caused by a defect, deficiency or impairment of any utility system, water system, water supply system, drainage system, waste system, heating or gas system, electrical apparatus or wires serving the concession premises. Concessionaire shall make every reasonable effort in its operations to minimize County's costs for utilities.

14.26.2 County at its sole discretion and at any time during the term of this Agreement, may install or cause to be installed a separate metering system for the electric service to the Whittier Narrows Tennis Center area. Subsequent to said installation, Concessionaire shall be solely responsible for the payment of electric service to the Whittier Narrows Tennis Center area provided there is mutual agreement on the terms and conditions therefor. The Director may adjust the monthly minimum amount and/or percentage of gross receipts as a result of the Concessionaire assuming the cost of said electric service. Said modified amount and/or percentage shall be set by mutual consent of the Director and the Concessionaire and shall be reasonable in accordance with the costs directly related thereto. Upon confirmation and approval-as-to-form of County Counsel, the Concessionaire shall execute the appropriate amendment to this Agreement.

15.0 TERMS AND CONDITIONS

15.1 AGREEMENT ENFORCEMENT

- 15.1.1 The Director shall be responsible for the enforcement of this Agreement on behalf of County and shall be assisted therein by those officers and employees of County having duties in connection with the administration thereof.
- 15.1.2 Any officers and/or authorized employees of County may enter upon the concession premises at any and all reasonable times for the purpose of determining whether or not Concessionaire is complying with the terms and conditions hereof, or for any other purpose incidental to the rights of County within the concession premises.
- 15.1.3 In the event County commences legal proceedings for the enforcement of this Contract or recovery of the premises services herein, Concessionaire does hereby agree to pay any sum which may be awarded to County by the Court for attorney's fees and costs incurred in the action brought thereon.

15.2 CANCELLATION

- 15.2.1 Upon the occurrence of any one or more of the events of default hereinafter described, this Agreement shall be subject to cancellation. As a condition precedent thereto, the Director shall give Concessionaire ten (10) days notice by registered or certified mail of the date set for cancellation thereof; the grounds therefore; and that an opportunity to be heard thereon will be afforded on or before said date, if request is made therefor.
- 15.2.2 Upon cancellation, County shall have the right to take possession of the concession premises, including all improvements, equipment, and inventory located thereon,

and use same for the purpose of satisfying and/or mitigating all damages arising from a breach of this Agreement.

15.2.3 Action by County to effectuate a cancellation and forfeiture of possession shall be without prejudice to the exercise of any other rights provided herein or by law to remedy a breach of this Agreement.

15.2.4 Any trustee, beneficiary, mortgagee or lender (hereinafter: Lender) under a hypothecation or mortgage previously approved by the Director shall have the right at any time during the term of this Agreement to undertake any and all action that may be required in order to prevent a cancellation of this Agreement and a forfeiture of the concession. Accordingly, the Director shall send a copy of any intended cancellation of this Agreement to any such Lender whose security would be affected thereby, provided that such Lender shall have previously registered with the Director by written notice specifying the name and address of said Lender; and upon request thereof for postponement, extend the date set therefor by such time as the Director finds reasonable in order to allow said parties to correct the grounds therefor or to provide a new Concessionaire under a power of sale or foreclosure contained in the hypothecation or mortgage, who upon transfer thereto shall become responsible for the correction thereof within such time as may be allowed by the Director.

15.2.5 In the event that, following service of the Notice of Cancellation of this Agreement under the provisions of this clause, it is determined for any reason that the Concessionaire was not in default under the provisions of this clause, that the default was excusable under provisions of this clause, or Concessionaire has, to the satisfaction of

the Director, cured any default, the Director shall issue, within five (5) business days, a rescission of the Notice of Cancellation, and the rights and obligations of the parties shall be the same as if the Notice of Cancellation had not been issued.

15.3 COMPLIANCE WITH CIVIL RIGHTS LAW

The Concessionaire hereby assures that it will comply with Subchapter VII of the Civil Rights Act of 1964, 42 USC Sections 2000 (e) (1) through 2000 (e) (17), to the end that no person shall, on the grounds of race, creed, color, sex, religion, ancestry, age, condition of physical handicap, marital status, political affiliation, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Contract or under any project, program, or activity supported by this Contract. The Concessionaire shall comply with Exhibit G, Concessionaire's EEO Certification.

15.4 CONCESSIONAIRE'S ACKNOWLEDGEMENT OF COUNTY'S COMMITMENT TO CHILD SUPPORT ENFORCEMENT

Concessionaire acknowledges that County places a high priority on the enforcement of child support laws and the apprehension of child support evaders. Concessionaire understands that it is County's policy to encourage all County contractors to voluntarily post County's "L.A.'s Most Wanted: Delinquent Parents" poster in a prominent position at Concessionaire's place of business. County's District Attorney will supply Concessionaire with the poster to be used.

15.5 CONCESSIONAIRE'S ACKNOWLEDGEMENT OF COUNTY'S COMMITMENT TO THE SAFELY SURRENDERED BABY LAW

The Concessionaire acknowledges that the County places a high priority on the implementation of the Safely Surrendered Baby Law. The Concessionaire understands that it is the County's policy to encourage all County Contractors to voluntarily post the County's

"Safely Surrendered Baby Law" poster in a prominent position at the Concessionaire's place of business. The Concessionaire will also encourage its subcontractors, if any, to post this poster in a prominent position in the subcontractor's place of business. The County's Department of Children and Family Services will supply the Concessionaire with the poster to be used.

15.6 CONCESSIONAIRE'S NON-COMPLIANCE AND LIQUIDATED DAMAGES

15.6.1 In the event the Director determines that there are deficiencies in Concessionaire's operations authorized and required herein, the Director will provide, as specified herein in the section of this Agreement entitled Events of Default, a written notice to the Concessionaire to correct said deficiencies within specified time frames.

15.6.2 In the event that Concessionaire fails to correct the deficiencies within the prescribed time frames the Director may, at his option: (1) use the Security Deposit as provided for herein, (2) exercise its rights under the Sub-Section 15.26 (Right of Entry) and/or (3) assess liquidated damages. The parties agree that it would be impracticable or extremely difficult to fix the extent of actual damages resulting from the failure of the Concessionaire to comply with the obligations for concession operations herein authorized and required. The parties hereby agree that under the current circumstances a reasonable estimate of such damage is \$250.00 per day for each day of the period of time that the deficiencies exist, and that Concessionaire shall be liable to County for liquidated damages in said amount.

15.7 CONTRACTOR'S RESPONSIBILITY AND DEBARMENT

15.7.1 A responsible Contractor is a Concessionaire who has demonstrated the attribute of trustworthiness, as well as

quality, fitness, capacity and experience to satisfactorily perform the Agreement. It is the County's policy to conduct business only with responsible Contractors.

- 15.7.2 The Concessionaire is hereby notified that, in accordance with Chapter 2.202 of the County Code, if the County acquires information concerning the performance of the Concessionaire on this or other Agreements which indicates that the Concessionaire is not responsible, the County may, in addition to other remedies provided in the Agreement, debar the Concessionaire from bidding or proposing on, or being awarded, and/or performing work on County Agreements for a specified period of time not to exceed 3 years, and terminate any or all existing Agreements the Concessionaire may have with the County.
- 15.7.3 The County may debar a Contractor if the Board of Supervisors finds, in its discretion, that the Concessionaire has done any of the following: (1) violated any term of a Agreement with the County or a nonprofit corporation created by the County, (2) committed any act or omission which negatively reflects on the Concessionaire's quality, fitness or capacity to perform a Agreement with the County or any other public entity, or engaged in a pattern or practice which negatively reflects on same, (3) committed an act or offense which indicates a lack of business integrity or business honesty, or (4) made or submitted a false claim against the County or any other public entity.
- 15.7.4 If there is evidence that the Concessionaire may be subject to debarment, the Department will notify the Concessionaire in writing of the evidence that is the basis for the proposed debarment and will advise the Concessionaire of the

scheduled date for a debarment hearing before the Contractor Hearing Board.

15.7.5 The Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. The Concessionaire and/or the Concessionaire's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board shall prepare a tentative proposed decision, which shall contain a recommendation regarding whether the Concessionaire should be debarred, and, if so, the appropriate length of time of the debarment. The Contractor and the Department shall be provided an opportunity to object to the tentative decision prior to its presentation to the Board of Supervisors.

15.7.6 After consideration of any objections, or if no objects are submitted, a record of the hearing, the proposed decision, and any other recommendation of the Contractor Hearing Board shall be presented to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.

15.7.7 These terms shall also apply to Subcontractors of County Concessionaires.

15.8 CONCESSIONAIRE'S WARRANTY OF ADHERENCE TO COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM

15.8.1 Concessionaire acknowledges that County has established a goal of ensuring that all individuals who benefit financially from County through this Agreement are in compliance with their court-ordered child, family and spousal support obligations in order to mitigate the economic burden otherwise imposed upon County and its taxpayers.

15.8.2 As required by County's Child Support Compliance Program (County Code Chapter 2.200) and without limiting Concessionaire's duty under this Agreement to comply with all applicable provisions of law, Concessionaire warrants that it is now in compliance and shall during the term of this Agreement maintain compliance with employment and wage reporting requirements as required by the Federal Social Security Act (42 USC Section 653a) and California Unemployment Insurance Code Section 1088.5, and shall implement all lawfully served Wage and Earnings Withholding Orders or District Attorney Notices of Wage and Earnings Assignment for child or Spousal Support, pursuant to Code of Civil Procedure Section 706.031 and Family Code Section 5246(b).

15.9 CONFLICT OF INTEREST

15.9.1 No County employee whose position with the County enables such employee to influence the award of this Agreement or any competing Agreement, and no spouse or economic dependent of such employee, shall be employed in any capacity by the Concessionaire or have any other direct or indirect financial interest in this Agreement. No officer or employee of the Concessionaire who may financially benefit from the performance of work hereunder shall in any way participate in the County's approval, or ongoing evaluation, of such work, or in any way attempt to unlawfully influence the County's approval or ongoing evaluation of such work.

15.9.2 The Concessionaire shall comply with all conflict of interest laws, ordinances, and regulations now in effect or hereafter to be enacted during the term of this Agreement. The Concessionaire warrants that it is not now aware of any facts that create a conflict of interest. If the Concessionaire

hereafter becomes aware of any facts that might reasonably be expected to create a conflict of interest, it shall immediately make full written disclosure of such facts to the County. Full written disclosure shall include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances.

15.10 CONSIDERATION OF HIRING TO GAIN/GROW PROGRAM PARTICIPANTS

Should the Concessionaire require additional or replacement personnel after the effective date of this Agreement, the Concessionaire shall give consideration for any such employment openings to participants in the County's Department of Public Social Services Greater Avenues for Independence (GAIN) Program or General Relief Opportunity for Work (GROW) Program who meet the Concessionaire's minimum qualifications for the open position. For this purpose, consideration shall mean that the Concessionaire will interview qualified candidates. The County will refer GAIN/GROW participants by job category to the Concessionaire.

15.11 COUNTY'S QUALITY ASSURANCE PLAN

The County or its agent will evaluate Concessionaire's performance under this agreement on not less than an annual basis. Such evaluation will include assessing Concessionaire's compliance with all contract terms and performance standards. Concessionaire deficiencies that County determines are severe or continuing and that may place performance of the agreement in jeopardy if not corrected, will be reported to the Board of Supervisors. The report will include improvement/corrective action measures taken by the County and Concessionaire. If improvement does not occur consistent with the corrective action measures, County may terminate this agreement or impose other penalties as specified in this agreement.

15.12 EVENTS OF DEFAULT

- 15.12.1 The abandonment, vacation or discontinuance of operations on the premises for more than twenty-four (24) consecutive hours.
- 15.12.2 The failure of Concessionaire to punctually pay or make the payments required herein when due, where the delinquency continues beyond ten (10) days following written notice for payment thereof.
- 15.12.3 The failure of Concessionaire to operate in the manner required by this Agreement, where such failure continues for more than ten (10) days after written notice from the Director to correct the condition.
- 15.12.4 The failure to maintain the concession premises and the improvements constructed thereon in the state of repair required herein, and in a clean, sanitary, safe and satisfactory condition, where such failure continues for more than ten (10) days after written notice from the Director to correct the condition.
- 15.12.5 The failure of Concessionaire to keep, perform and observe all of the other promises, covenants, conditions and agreements set forth in this Agreement, where such failure continues for more than thirty (30) days after written notice from the Director for correction thereof, provided that where fulfillment of such obligation requires activity over a period of time and Concessionaire shall have commenced to perform whatever may be required to cure the particular default within ten (10) days after such notice and continues such performance diligently, said time limit may be waived in the manner and to the extent allowed by the Director.
- 15.12.6 The filing of a voluntary petition in bankruptcy by Concessionaire; the adjudication of Concessionaire as a

bankrupt; the appointment of any receiver of Concessionaire's assets; the making of a general assignment for the benefit of creditors, a petition or answer seeking an arrangement for the reorganization of Concessionaire under any Federal Reorganization Act, including petitions or answers under Chapter XI of the Bankruptcy Act; the occurrence of any act which operates to deprive Concessionaire permanently of the rights, powers and privileges necessary for the proper conduct and operation of the Tennis Center Concession, the levy of any attachment or execution which substantially interferes with Concessionaire's operations under this Agreement and which attachment or execution is not vacated, dismissed, stayed or set aside within a period of sixty (60) days.

15.12.7 Determination by the County, the California Fair Employment and Housing Commission, or the Federal Equal Employment Opportunity Commission of discrimination having been practiced by Concessionaire in violation of State and/or Federal laws thereon.

15.12.8 Transfer of the majority controlling interest of Concessionaire to persons other than those who are in control at the time of the execution of this Agreement without approval thereof by the Director.

15.12.9 Failure of Concessionaire to keep, perform and observe all other promises, covenants, conditions and agreements set forth herein.

15.13 FAIR LABOR STANDARDS

The Concessionaire shall comply with all applicable provisions of the Federal Fair Labor Standards Act and shall indemnify, defend, and hold harmless the County and its agents, officers, and employees from any and all liability, including, but not limited to, wages, overtime pay,

liquidated damages, penalties, court costs, and attorneys' fees arising under any wage and hour law, including, but not limited to, the Federal Fair Labor Standards Act, for work performed by the Concessionaire's employees for which the County may be found jointly or solely liable.

15.14 FORCE MAJEURE; TIME EXTENSION

If performance by a party of any portion of this Agreement is made impossible or impractical by any prevention, delay, or stoppage caused by strikes; lockouts; labor disputes; acts of God; inability to obtain services, labor, utilities, supplies or materials or reasonable substitutes for those items; administrative or court proceedings; government actions; civil commotions; fire, earthquake, war, weather, or other casualty; or other causes or circumstances beyond the reasonable control of the party obligated to perform, performance by that party for a period equal to the period of that prevention, delay, or stoppage is excused. Concessionaire's obligation to pay rent, however, is not excused by this Section.

15.15 GOVERNING LAW, JURISDICTION, and VENUE

This Contract shall be governed by, and construed in accordance with, the laws of the State of California. The Concessionaire agrees and consents to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this Contract and further agrees and consents that venue of any action brought hereunder shall be exclusively in the County of Los Angeles.

15.16 INDEPENDENT CONTRACTOR

This Agreement is by and between the County of Los Angeles and Concessionaire and is not intended, and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association, as between County and Concessionaire. Concessionaire understands and agrees that all persons furnishing services on behalf of Concessionaire pursuant to this Agreement are, for purposes of Worker's Compensation Liability, employees solely of

Concessionaire and not of County. Concessionaire shall bear the sole responsibility and liability for furnishing Workers' Compensation benefits to any person for injuries arising from or connected with services on behalf of Concessionaire pursuant to this Agreement.

15.17 INDEMNIFICATION

Concessionaire agrees to indemnify, defend and hold harmless County, the United States Army Corps of Engineers, and the County of Los Angeles Flood Control District, their agents, officers, and employees from and against any and all liability, including but not limited to, demands, claims, actions, fees, costs and expenses (including attorney and expert witness fees), arising from or connected with Concessionaire's acts and/or omissions arising from and/or relating to this Agreement. Concessionaire's duty to indemnify the County, the United States Army Corps of Engineers, and the County of Los Angeles Flood Control District shall survive the expiration or other termination of this Agreement.

15.18 INSURANCE REQUIREMENTS

Without limiting the Concessionaire's indemnification of the County and during the term of this Contract, the Concessionaire shall provide and maintain at its own expense, and shall require all of its subcontractors to maintain, the following programs of insurance specified in this Contract. Such insurance is to be provided by an insurance company acceptable to the County with an A.M. Best rating of not less than A:VII, unless otherwise approved by the County. Further, all such insurance shall be primary to and not contributing with any other insurance or self-insurance programs maintained by the County and, with the Exception of Worker's Compensation insurance, shall name the County of Los Angeles, United States Army Corps of Engineers and the County of Los Angeles Flood Control District as additional insureds.

15.18.1 Evidence of Insurance:

Certificate(s) or other evidence of coverage satisfactory to County shall be delivered to the Director, Attention: Toni Simmons, 433 South Vermont Avenue, Los Angeles, CA 90020, prior to commencing services under this Agreement. Such certificates or other evidence shall:

- a. Specifically identify this Agreement.
- b. Clearly evidence all coverages required in this Agreement.
- c. Contain the express condition that County is to be given written notice by mail at least thirty (30) days in advance of cancellation for all policies evidenced on the certificate of insurance.
- d. Include copies of the additional insured endorsement to the commercial general liability policy, adding the County of Los Angeles, United States Army Corps of Engineers and the County of Los Angeles Flood Control District, its officials, officers and employees as insureds for all activities arising from this Agreement.
- e. Identify any deductibles or self-insured retentions for County's approval. The County retains the right to require Concessionaire to reduce or eliminate such deductibles or self-insured retentions as they apply to County, or, require Concessionaire to provide a bond guaranteeing payment of all such retained losses and related costs, including, but not limited to, expenses or fees, or both, related to investigations, claims administrations, and legal defense. Such bond shall be executed by a corporate surety licensed to transact business in the State of California.

15.18.2 Notification of Incidents, Claims or Suits

Concessionaire shall report to County:

- a. Any accident or incident relating to services performed under this Agreement which involves injury or property damage which may result in the filing of a claim or lawsuit against Concessionaire and/or County. Such report shall be made in writing within twenty-four (24) hours of occurrence.
- b. Any third party claim or lawsuit filed against Concessionaire arising from or related to services performed by Concessionaire under this Agreement.
- c. Any injury to a Concessionaire employee which occurs on County property. This report shall be submitted on a County "Non-employee Injury Report" to the County contract manager.
- d. Any loss, disappearance, destruction, misuse, or theft of any kind whatsoever of County property, monies or securities entrusted to Concessionaire under the terms of this Agreement.

15.18.3 Insurance Coverage Requirements for Subcontractors

Concessionaire shall ensure any and all subcontractors performing services under this Agreement meet the insurance requirements of this Agreement by either:

- a. Concessionaire providing evidence of insurance covering the activities of subcontractors; or
- b. Concessionaire providing evidence submitted by subcontractors evidencing that subcontractors maintain the required insurance coverage. County retains the right to obtain copies of evidence of subcontractor insurance coverage at any time.

15.19 INSURANCE COVERAGE REQUIREMENTS

15.19.1 Concessionaire shall provide and maintain, throughout the term of this Agreement, the following programs and amounts of insurance:

- a. **General Liability:** Insurance (written on ISO policy form CG 00 01 or its equivalent) with limits of not less than the following:

General Aggregate: \$2,000,000

Products/Completed
Operations Aggregate: \$1,000,000

Personal and Advertising Injury: \$1,000,000

Each Occurrence: \$1,000,000

- b. **Automobile Liability:** Insurance (written on ISO policy form CA 00 01 or its equivalent) with a limit of liability of not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence. Such insurance shall include coverage for all "owned", "non-owned" and "hired" vehicles, or coverage for "any auto".

- c. **Workers Compensation and Employer's Liability:** Insurance providing workers compensation benefits, as required by the Labor Code of the State of California, or any other state, and for which the Concessionaire is responsible. If Concessionaire's employees will be engaged in maritime employment, coverage shall provide workers compensation benefits as required by the U.S. Longshore and Harbor Workers' Compensation Act, Jones Act or any other federal law for which Concessionaire is responsible. In all cases, such insurance shall also include Employer's Liability coverage for all persons providing services on behalf of the

Concessionaire and for all risk to such persons under this Agreement with limits of not less than the following:

Each Accident: \$1,000,000

Disease - policy limit: \$1,000,000

Disease - each employee: \$1,000,000

d. **Property Coverage:** Such insurance shall be endorsed naming the County of Los Angeles as loss payee, provide deductibles of no greater than five percent (5%) of the property value, and shall include:

i. **Personal Property: Automobiles and Mobile Equipment** - Special form ("all risk") coverage for actual cash value of County-owned or leased property; and

ii. **Real Property and All Other Personal Property** - Special form ("all risk") coverage for the full replacement value of County-owned or leased property.

15.19.2 Failure to Procure Insurance

a. Failure by Concessionaire to procure or maintain the required insurance, or to provide evidence of insurance coverage acceptable to the County, shall constitute a material breach of the contract upon which County may immediately terminate or suspend this Agreement. County, at its sole option, may obtain damages from Concessionaire resulting from said breach. Alternatively, County may purchase such required insurance coverage, and without further notice to Concessionaire, County may deduct from sums due to Concessionaire any premium costs advanced by County for such insurance.

b. Notwithstanding the above and in the event that Concessionaire fails to comply with any of the indemnification or insurance requirements of this Agreement, and such failure to comply results in any costs to County, Concessionaire shall pay full compensation for all costs incurred by County.

15.20 NON-DISCRIMINATION AND AFFIRMATIVE ACTION

15.20.1 The Concessionaire certifies and agrees that all persons employed by it, its affiliates, subsidiaries or holding companies are and shall be treated equally without regard to or because of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations.

15.20.2 The Concessionaire shall certify to and comply with the provisions of Exhibit G, Concessionaire's EEO Certification.

15.20.3 The Concessionaire shall take affirmative action to ensure that qualified applicants are employed, and that employees are treated during employment, without regard to or because of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations. Such action shall include, but is not limited to: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

15.20.4 The Concessionaire certifies and agrees that it will deal with its subcontractors, bidders and vendors without regard to or because of race, color, religion, ancestry, national origin, sex,

age, physical or mental disability, marital status, or political affiliation.

- 15.20.5 The Concessionaire certifies and agrees that it, its affiliates, subsidiaries, or holding companies shall comply with all applicable Federal and State laws and regulations to the end that no person shall, on the grounds of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement or under any other project, program, or activity supported by this Agreement.
- 15.20.6 The Concessionaire shall allow County representatives access to the Concessionaire's employment records during regular business hours to verify compliance with the provisions of this Sub-Paragraph 15.20 when so requested by the County.
- 15.20.7 If the County finds that any provisions of this Sub-Paragraph 15.20 have been violated, such violation shall constitute a material breach of this Agreement upon which the County may terminate or suspend this Agreement. While the County reserves the right to determine independently that the anti-discrimination provisions of this Agreement have been violated, in addition, a determination by the California Fair Employment Practices Commission or the Federal Equal Employment Opportunity Commission that the Concessionaire has violated Federal or State anti-discrimination laws or regulations shall constitute a finding by County that Concessionaire has violated the anti-discrimination provisions of this Agreement.

15.20.8 The parties agree that in the event Concessionaire violates the non-discrimination provisions of this Agreement, County shall, at its sole option, be entitled to the sum of Five Hundred Dollars (\$500) for each such violation pursuant to California Civil Code 1671 as liquidated damages in lieu of canceling, terminating or suspending this Agreement.

15.21 NOTICE TO EMPLOYEES REGARDING FEDERAL EARNED INCOME CREDIT

The Concessionaire shall notify its employees, and shall require each subcontractor to notify its employees, that they may be eligible for the Federal Income Credit under the federal income tax laws. Such notice shall be provided in accordance with the requirements set forth in Internal Revenue Service Notice No. 1015.

15.22 NOTICE TO EMPLOYEES REGARDING THE SAFELY SURRENDERED BABY LAW

The Concessionaire shall notify and provide to its employees, and shall require each subcontractor notify and provide to its employees, a fact sheet regarding the Safely Surrendered Baby Law, its implementation in Los Angeles County, and where and how to safely surrender a baby. The fact sheet is set forth in Exhibit F of this Agreement and is also available on the Internet for printing purposes at www.babysafela.org.

15.23 NOTICES

Any notice required to be given under the terms of this Agreement or any law applicable thereto may be: (1) delivered by personal service; or (2) placed in a sealed envelope, with postage paid, return receipt requested, addressed to the person on whom it is to be served, and deposited in a post office, mailbox, sub-post office, substation or mail chute, or other like facility regularly maintained by the United States Postal Service. The address to be used for any notice served by mail upon Concessionaire shall be Ken and Courtney Hance, 1201 North

Potrero Avenue, South El Monte, CA 91733, or such other place as may hereafter be designated in writing to the Director by Concessionaire. The address to be used for any notice served by mail upon County shall be 433 South Vermont Avenue, Los Angeles, CA 90020, Attention: Contract Services, or such other place as may hereafter be designated in writing to Concessionaire by the Director. Service by mail shall be deemed complete upon deposit in the above mentioned manner.

15.24 PUBLIC RECORDS ACT

15.24.1 Any documents submitted by Concessionaire; all information obtained in connection with the County's right to audit and inspect Concessionaire's documents, books, and accounting records pursuant to Paragraph 8.3 of this Agreement; as well as those documents which were required to be submitted in response to the Request for Proposals (RFP) used in the solicitation process for this Agreement, become the exclusive property of the County. All such documents become a matter of public record and shall be regarded as public records. Exceptions will be those elements in the California Government Code Section 6250 et seq. (Public Records Act) and which are marked "trade secret", "confidential", or "proprietary". The County shall not in any way be liable or responsible for the disclosure of any such records including, without limitation, those so marked, if disclosure is required by law, or by an order of court of competent jurisdiction.

15.24.2 In the event the County is required to defend an action on a Public Records Act request for any of the aforementioned documents, information, books, records, and/or contents of a proposal marked "trade secret", "confidential", or "proprietary", the Concessionaire agrees to defend and

indemnify the County from all costs and expenses, including reasonable attorney's fees, in any action or liability arising under the Public Records Act.

15.25 RECYCLED-CONTENT PAPER

Consistent with the Board of Supervisors' policy to reduce the amount of solid waste deposited at the County landfills, the Concessionaire agrees to use recycled-content paper to the maximum extent possible on this Agreement.

15.26 RIGHT OF ENTRY

15.26.1 Any officers and/or authorized employees of the Corps of Engineers and County may enter upon the concession premises at any and all reasonable times for the purpose of determining whether or not Concessionaire is complying with the terms and conditions hereof, or for any other purpose incidental to the rights of the County within the concession premises.

15.26.2 In the event of an abandonment, vacation or discontinuance of operations for a period in excess of twenty-four (24) hours, Concessionaire hereby irrevocably appoints County as an agent for continuing operation of the concession granted herein, and in connection therewith authorizes the officers and employees thereof to (1) take possession of the concession premises, including all improvements, equipment and inventory thereon; (2) remove any and all persons or property on said premises and place any such property in storage for the account of and at the expense of Concessionaire; (3) sublease or sublicense the premises; and (4) after payment of all expenses of such subleasing or sublicensing, apply all payments realized therefrom to the satisfaction and/or mitigation of all damages arising from Concessionaire's breach of this Agreement. Entry by the

officers and employees of County upon the premises for the purpose of exercising the authority conferred hereon as agent of Concessionaire shall be without prejudice to the exercise of any other rights provided herein or by law to remedy a breach of this Agreement.

15.26.3 No re-entry or taking of the premises by County pursuant to Sub-Paragraph 15.26.2 of this section shall be construed as an election to terminate this Agreement unless a written notice of such intention be given to Concessionaire or unless the termination thereof be decreed by a court of competent jurisdiction.

15.27 SEVERABILITY

If any provision of this Agreement is determined to be illegal, invalid or unenforceable by a court of competent jurisdiction, the remaining provisions hereof shall not be affected thereby and shall remain in full force and effect.

15.28 SUBLICENSES

15.28.1 Concessionaire shall not, without the prior written consent of the Director, sublicense any portion of the concession premises, or sublicense any of the operation or activities authorized or required by this Agreement.

15.28.2 In the event the County determines that the Concessionaire has violated the sublicense provision contained herein, the same shall constitute a material breach of contract upon which the County may determine to cancel, terminate, or suspend this Agreement, or assess liquidated damages. The parties agree that it would be impracticable or extremely difficult to fix the extent of actual damages resulting from the failure of the Concessionaire to comply with the sublicense provision. The parties hereby agree that under the current circumstances a reasonable estimate of such damage is

One Thousand Dollars (\$1,000.00) and that the Concessionaire shall be liable to County for liquidated damages in said amount.

15.29 SURRENDER

15.29.1 Upon expiration of the term hereof, or cancellation thereof as herein provided, Concessionaire shall peaceably vacate the concession premises and any and all improvements located thereon and deliver up the same to County in a reasonably good condition, ordinary wear and tear excepted, subject to the right of County to demand removal thereof to the extent that Paragraph 4.6 hereinbefore may be applicable thereto.

15.29.2 Upon expiration of the term, Concessionaire shall execute and deliver to County within thirty (30) days after service of written demand, a good and sufficient quitclaim deed of the Concessionaire's interest in this Agreement and the premises. Should Concessionaire fail or refuse to deliver to County a quitclaim deed as aforesaid, a written notice by County reciting the failure of the Concessionaire to execute and deliver the quitclaim deed shall, after ten (10) days from the date of recordation of the notice, be conclusive evidence against Concessionaire and all persons claiming under Concessionaire, of the termination of this Agreement.

15.30 TAXES AND ASSESSMENTS

15.30.1 The property interest conveyed herein may be subject to real property taxation and/or assessment thereon, and in the event thereof, Concessionaire shall pay before delinquency all lawful taxes, including but not limited to possessory interest taxes, assessments, fees or charges which at any time may be levied by the State, County, City or any other

tax or assessment-levying body upon the concession premises and any improvements located thereon.

15.30.2 Concessionaire shall also pay all taxes, assessments, fees and charges on goods, merchandise, fixtures, appliances and equipment owned or used therein.

15.31 TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN CHILD SUPPORT COMPLIANCE

Failure of Concessionaire to maintain compliance with the requirements set for in Sub-Section 15.8 "Concessionaire's Warranty Of Adherence To County's Child Support Compliance Program" shall constitute a default by Concessionaire under this Agreement. Without limiting the rights and remedies available to County under any other provision of this Agreement, failure to cure such default within 90 days of notice by the Los Angeles County District Attorney shall be grounds upon which the county Board of Supervisors may terminate this Agreement pursuant to Sub-Section 15.2 "Cancellation".

15.32 TERMINATION FOR IMPROPER CONSIDERATION

15.32.1 County may, by written notice to Concessionaire, immediately terminate the right of Concessionaire to proceed under this Agreement if it is found that consideration, in any form, was offered or given by Concessionaire, either directly or through an intermediary, to any County officer, employee or agent with the intent of securing the Agreement or securing favorable treatment with respect to the award, amendment or extension of the Agreement or the making of any determinations with respect to the Concessionaire's performance pursuant to the Agreement. In the event of such termination, County shall be entitled to pursue the same remedies against Concessionaire as it could pursue in the event of default by the Concessionaire.

- 15.32.2 Concessionaire shall immediately report any attempt by a County officer, employee or agent to solicit such improper consideration. The report shall be made either to the County manager charged with the supervision of the employee or to the Auditor-Controller's Fraud Hotline at (800) 544-6861 or to such other number as may be provided to Concessionaire in writing by County
- 15.32.3 Among other items, such improper consideration may take the form of cash, discounts, service, the provision of travel or entertainment, or tangible gifts.

15.33 TERMINATION FOR INSOLVENCY

- 15.33.1 The County may terminate this Agreement forthwit in the event of the occurrence of any of the following:
- Insolvency of the Concessionaire. The Concessionaire shall be deemed to be insolvent if it has ceased to pay its debts for at least sixty (60) days in the ordinary course of business or cannot pay its debts as they become due, whether or not a petition has been filed under the Federal Bankruptcy Code and whether or not the Concessionaire is insolvent within the meaning of Federal Bankruptcy Code;
- 15.33.2 To the extent permitted by law, the County may terminate this Agreement forthwit in the event of the occurrence of any of the following:
- The filing of a voluntary or involuntary petition regarding the Concessionaire under the Federal Bankruptcy Code;
 - The appointment of a Receiver or Trustee for Concessionaire; or
- 15.33.3 The rights and remedies of County provided in this Sub-Section 15.33 shall not be exclusive and are in addition to

any other rights and remedies provided by law or under this Agreement.

15.34 TERMINATION FOR NON-ADHERENCE OF COUNTY LOBBYIST ORDINANCE

Concessionaire and each County Lobbyist or County Lobbying firm as defined in Los Angeles County Code Section 2.160.010, retained by Concessionaire, shall fully comply with the County Lobbyist Ordinance, Los Angeles County Code 2.160. Failure on the part of Concessionaire or any County Lobbyist or County lobbying firm retained by Concessionaire to fully comply with the County Lobbyist Ordinance shall constitute a material breach of this Agreement upon which County may immediately terminate or suspend this Agreement.

15.35 TERMINATION UPON TRANSFER OF TITLE OR PARK CLOSURE

15.35.1 Notwithstanding any other provision of this Agreement, in the event the County transfers its interest in the Whittier Narrows Recreation Area and the concession premises to a governmental agency (assignee), the County reserves the right to: terminate this Agreement; or provided there is consent by an assignee, assign the County's interest in this Agreement to said assignee. County shall provide the Concessionaire with notice of termination or assignment of this Agreement pursuant to this provision.

15.35.2 Notwithstanding any other provision of this Agreement, in the event the County closes the Whittier Narrows Recreation Area, this Agreement shall be terminated upon the effective date of such closure. Upon the effective date of park closure, Concessionaire shall immediately cease its operations, and within fifteen (15) days therefrom remove all items of its personal property, equipment, and inventory. County shall provide advance notice to the Concessionaire of such park closure.

15.36 TRANSFERS

- 15.36.1 Concessionaire shall not, without written consent of the Director, transfer, assign, sublicense, hypothecate or mortgage this Agreement. Any attempted transfer, assignment, sublicense, hypothecation or mortgage without the written consent of the Director shall be null and void, and shall constitute a material breach of this Agreement.
- 15.36.2 Each and all of the provisions, agreements, terms, covenants and conditions herein contained to be performed by Concessionaire shall be binding upon any transferee thereof.
- 15.36.3 The concession shall not be transferable by testamentary disposition or the State laws of interstate succession, as the rights, privileges, and use conferred by this Agreement shall terminate prior to the date for expiration thereof in the event of the death of Concessionaire occurring within the term herein provided. Additionally, neither this Agreement nor any interest therein shall be transferable in proceedings in attachment or execution against Concessionaire, or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against Concessionaire, or by any process of law including proceedings under Chapter X or XI of the Bankruptcy Act.
- 15.36.4 Shareholders and/or partners of Concessionaire may transfer, sell, exchange, assign or divest themselves of any interest they may have therein. However, in the event any such sale, transfer, exchange, assignment or divestment is effected in such a way as to give majority control of Concessionaire to any persons, corporation, partnership or legal entity other than the majority controlling interest therein at the time of the execution of this Agreement, the Director's

approval thereof shall be required. Consent to any such transfer shall be refused if the Director finds that the transferee is lacking in experience and/or financial ability to conduct the concession.

15.36.5 The prohibition herein contained shall not be applicable with respect to transfers of this Agreement arising from the exercise of a power of sale or judicial foreclosure pursuant to the terms and conditions of a hypothecation or mortgage previously approved by the Director.

15.36.6 In the event Concessionaire shall request the prior written consent of Director to give, assign, transfer or grant control of this Agreement, and Director gives written consent to the assignment, a transfer fee equal to one percent (1%) of the gross sales price shall be paid to County. Said sum shall be payable to County in full either within thirty (30) days after said consent is given or prior to the close of any escrow, whichever occurs first. Prior to Director's consent to such assignment, the assignor shall first deliver to assignee a written schedule of all sums due and owing to County from the assignor with such schedule in a form subject to the approval of the Director in all respects, and second, shall deliver to Director, as part of the acceptance of the assignment, a written acknowledgment by the assignee that the assignee (a) affirms the sums due and owing to County and (b) accepts responsibility for payment of such sums directly to County. Exempted from said transfer fee shall be the following:

- a. A transfer of an undivided interest in the concession between or among co-workers or affiliated entities which results in a change in method of holding title but does not

- result in a change to the proportional interests held by the co-owners or affiliated entities prior to the transfer;
- b. An assignment which serves as security for the repayment of a loan from any lender but which does not entitle the assignee to an immediate right to use, occupy, possess or receive the rents or profits from the concession for so long as the assignor makes the required periodic payments and complies with other provisions of the loan;
 - c. A transfer of title of the concession to a lender purchaser at the foreclosure sale under a deed of trust on the property or by assignment to the lender or its nominee in lieu of foreclosure;
 - d. Such other assignment for which the Director determines that the ownership interests in the concession have remained unchanged, such as a change in the legal or fictitious name of the Concessionaire without any other change in the equity, in beneficial use of, or legal title to the concession as an asset, or the income produced thereby. The Director's decision in such cases shall be appealable to the Board of Supervisors within ten (10) days after receipt of written notice of the Director's decision. Any such appeal request shall be accompanied by a Certificate of Deposit filed with the Director in the full amount of the transfer fee; the Certificate of Deposit shall be payable to County, and the interest thereon shall accumulate, but the principal sum and interest shall remain the property of Concessionaire in the event the Director's decision is reversed.

15.37 WAIVER

- 15.37.1 Any waiver by County of any breach of any one or more of the covenants, conditions, terms and agreements herein contained shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term or agreement herein contained, nor shall failure on the part of County to require exact, full and complete compliance with any of the covenants, conditions, terms or agreements herein contained be construed as in any manner changing the terms of this Agreement or estopping County from enforcing the full provisions thereof.
- 15.37.2 No delay, failure, or omission of County to re-enter the concession premises or to exercise any right, power, privilege or option, arising from any default, nor any subsequent acceptance of payments then or thereafter accrued shall impair any such right, power, privilege or option, or be construed as a waiver of or acquiescence in such default or as a relinquishment of any right.
- 15.37.3 No notice to Concessionaire shall be required to restore or revive "time of the essence" after the waiver by County of any default.
- 15.37.4 No option, right, power, remedy or privilege of County shall be construed as being exhausted by the exercise thereof in one or more instances. The rights, powers, options and remedies given County by this Agreement shall be cumulative.

15.38 WARRANTY AGAINST CONTINGENT FEES

- 15.38.1 The Concessionaire warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon any Agreement or understanding for a

commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Concessionaire for the purpose of securing business.

15.38.2 For breach of this warranty, the County shall have the right to terminate this Agreement and, at its sole discretion, deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

16.0 ENTIRE AGREEMENT

This document and the Exhibit(s) attached hereto, constitute the entire agreement between County and Concessionaire for the use granted at Whittier Narrows Recreation Area for the Tennis Center Operations Concession. All other agreements, promises and representations with respect thereto, other than contained herein, are expressly revoked, as it has been the intention of the parties to provide for a complete integration within the provisions of this document, and the Exhibit(s) attached hereto, the terms, conditions, promises and covenants relating to the Tennis Center Operations Concession and the premises to be used in the conduct thereof. The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render the other provisions thereof unenforceable, invalid or illegal.

17.0 AUTHORIZATION WARRANTY

Concessionaire represents and warrants that the signatory to this Agreement is fully authorized to obligate Concessionaire hereunder and that all corporate acts necessary to the execution of this Agreement have been accomplished.

/

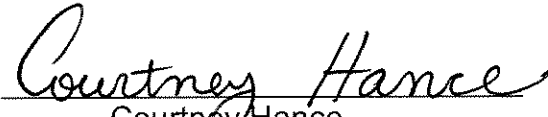
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IN WITNESS WHEREOF, Concessionaire has executed this Concession Agreement, or caused it to be duly executed, and County of Los Angeles, by order of its Board of Supervisors, has caused this Concession Agreement to be executed on its behalf by the Chair of said Board and attested by Executive Officer-Clerk of the Board thereof, the day and year first above written.

CONCESSIONAIRE

Kenneth and Courtney Hance
dba Enhance Tennis Management

By 
Kenneth Hance

By 
Courtney Hance

COUNTY OF LOS ANGELES

By _____
Chair, Board of Supervisors

ATTEST:

VIOLET VARONA-LUKENS
Executive Officer-Clerk of
the Board of Supervisors

By _____
Deputy

APPROVED AS TO FORM:

RAYMOND G. FORTNER, JR.
County Counsel

By 
Principal Deputy

STATE OF CALIFORNIA }
 }
COUNTY OF LOS ANGELES } s.s.

On this 23rd day of MARCH, 2005,
before me, Conny B. McCormack, the Registrar-Recorder/County Clerk of the County of
Los Angeles, personally appeared Kenneth Hance
personally known to me (or proved to me on the basis of satisfactory evidence) to be the
person whose name is subscribed to the within instrument and acknowledged to me that
he / she executed the instrument.

WITNESS my hand and official seal.



Conny B. McCormack
Registrar-Recorder / County Clerk
County of Los Angeles

By 
Deputy County Clerk

STATE OF CALIFORNIA }
 }
COUNTY OF LOS ANGELES } s.s.

On this 23rd day of MARCH, 2005,
before me, Conny B. McCormack, the Registrar-Recorder/County Clerk of the County of
Los Angeles, personally appeared Courtney Hance
personally known to me (or proved to me on the basis of satisfactory evidence) to be the
person whose name is subscribed to the within instrument and acknowledged to me that
he / she executed the instrument.

WITNESS my hand and official seal.



Conny B. McCormack
Registrar-Recorder / County Clerk
County of Los Angeles

By

Deputy County Clerk

EXHIBIT A

BOARD OF SUPERVISORS' COPY

DEPARTMENT OF THE ARMY

LEASE

No. DACW09-1-86-43

56198

FOR PUBLIC PARK AND RECREATIONAL PURPOSES

WHITTIER NARROWS FLOOD CONTROL BASIN PROJECT AREA
LOS ANGELES COUNTY, CALIFORNIA

THE SECRETARY OF THE ARMY under authority of Section 4 of the Act of Congress approved 22 December 1944, as amended (16 U.S.C. 460d), hereby grants to the COUNTY OF LOS ANGELES, a political subdivision of the state of California, hereinafter referred to as Lessee, a lease for a period of fifty (50) years commencing on 1 June 1986, and ending on 31 May 2036, to use and occupy approximately 1,252.04 acres of land and water areas under the primary jurisdiction of the Department of the Army in the Whittier Narrows Project Area, hereinafter referred to as the premises as shown on attached Exhibit

"A", numbered 142-K-122.5, dated 11 February 1957, for public park and recreational purposes.

THIS LEASE is granted subject to the following conditions:

1. The lessee shall conform to such regulations as the Secretary of the Army may issue to govern the public use of the project area, and shall comply with the provisions of the above cited Act of Congress. The lessee shall protect the premises from fire, vandalism, and soil erosion, and may make and enforce such regulations as are necessary, and within its legal authority, in exercising the privileges granted in this lease, provided that such regulations are not inconsistent with those issued by the Secretary of the Army or with provisions of the above cited Act of Congress.

2. The lessee shall administer and maintain the premises in accordance with the U.S. Army Engineers' Master Plan and the implementing General Development Plan for the premises and with an Annual Management Program to be mutually agreed upon between the lessee and the U.S. Army District Engineer in charge of the administration of the project, which may be amended from time to time as may be necessary. Such Annual Management Program shall include, but is not limited to, the following:

a. Plans for management activities to be undertaken by the lessee or jointly by the U.S. Army Engineers and the lessee, including improvements and other facilities to be constructed thereon.

b. Budget of the lessee for carrying out the management activities.

c. Personnel to be used in the management of the area.

3. The lessee shall provide the facilities and services necessary to meet the public demand either directly or through concession agreements with third parties. All such agreements shall state that they are granted subject to the provisions of this lease and that the concession agreement will not be effective until approved by the District Engineer.

4. Admission, entrance or user fees may be charged by the lessee for the entrance to or use of the premises or any facilities constructed thereon, PROVIDED, prior written approval of the District Engineer is obtained.

5. The amount of ~~any~~ and all rates and prices charged by the lessee or its concessionaires for accommodations, food (except packaged goods), and services furnished or sold to the public shall be subject to the prior approval of the District Engineer. The lessee shall, by 15 April and 15 October of each year, submit to the District Engineer for approval a list of the fees, rates and prices proposed for the following 6 months, including justification for any proposed increase or decrease. The District Engineer will give written notice to the lessee of his approval of or objection to any proposed fee, rate or price and will, if appropriate, state an approved fee, rate or price for each item to which an objection has been made. The lessee and/or its concessionaires shall keep a schedule of such fees, rates or prices posted at all times in a conspicuous place on the leased premises.

6. All monies received by the lessee from operations conducted on the premises, including, but not limited to, entrance and admission fees and user fees and rental or other consideration received from its concessionaires, may be utilized by the lessee for the administration, maintenance, operation and development of the premises. Any such monies not so utilized, or programmed for utilization within a reasonable time, shall be paid to the District Engineer at the end of each 5-year period. The lessee shall establish and maintain adequate records and accounts and render annual statements of receipts and expenditures to the District Engineer, except for annual or weekly entrance fees which also are honored at other recreational areas operated by the lessee. The District Engineer shall have the right to perform audits of the lessee's records and accounts, and to require the lessee to audit the records and accounts of third party concessionaires, and furnish the District Engineer a copy of the results of such an audit.

7. All structures shall be constructed and landscaping accomplished in accordance with plans approved by the District Engineer. * Further, the lessee shall not discharge waste or effluent from the premises in such a manner that such discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

8. The right is reserved to the United States, its officers, agents, and employees, to enter upon the premises at any time and for any purpose necessary or convenient in connection with river and harbor and flood control work, and to remove timber or other material required for such work, to flood the premises when necessary, and/or to make any other use of the land as may be necessary in connection with public navigation and flood control, and the lessee shall have no claim for damages of any character on account thereof against the United States or any agent, officer or employee thereof.

9. Any property of the United States damaged or destroyed by the lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the lessee to the satisfaction of the District Engineer.

10. The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges herein granted, or for damages to the property of the lessee, or for damages to the property or injuries to the person of the lessee's officers, agents, servants, or employees or others who may be on the premises at their invitation or the invitation of any one of them, arising from or incident to the flooding of the premises by the Government or flooding from any other cause, or arising from or incident to any other governmental activities, and the lessee shall hold the United States harmless from any and all such claims.

11. That at the time of the commencement of this lease, the lessee will ~~obtain from a~~ have in its possession ~~reputable insurance company, acceptable to the Government, liability or indemnity insurance providing for minimum limits of \$100,000.00 per person in any one claim, and an aggregate limit of \$1,000,000.00 for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, and \$250,000.00 for damage to property suffered or alleged to have been suffered by any person or persons resulting from the operations of the lessee under the terms of this lease.~~

*(7. Continued) it being understood that no permanent type of recreational building or accessory facilities shall be erected on the land below elevation 215 M.S.L., except that open-type structures may be erected between elevations 215 M.S.L. and elevation 210 M.S.L. upon written approval of plans of such structures by the said District Engineer.

12. This lease may be relinquished by the lessee at any time by giving to the Secretary of the Army, through the District Engineer, at least 30 days' notice in writing.

13. This lease may be revoked by the Secretary of the Army in the event the lessee violates any of the terms and conditions of this lease and continues and persists therein for a period of 30 days after notice thereof in writing by the District Engineer.

14. On or before the date of expiration of this lease or its relinquishment by the lessee, the lessee shall vacate the premises, remove its property therefrom, and restore the premises to a condition satisfactory to the District Engineer. If, however, this lease is revoked, the lessee shall vacate the premises, remove its property therefrom, and restore the premises as aforesaid within such time as the Secretary of the Army may designate. In either event, if the lessee shall fail or neglect to remove its property and so restore the premises, then its property shall become the property of the United States without compensation therefor, and no claim for damages against the United States or its officers or agents shall be created by or made on account thereof.

15. The lessee or its concessionaires shall not discriminate against any person or persons because of race, creed, color or national origin in the conduct of its operations hereunder. The grantee furnishes as part of this contract an assurance (Exhibit) that he will comply with Title VI of the Civil Rights Act of 1964 (78 Stat. 241) and Department of Defense Directive 5500.11 issued pursuant thereto and published in Part 300 of Title 32, Code of Federal Regulations, and that it will obtain such assurances from all its concessionaires.

16. All notices to be given pursuant to this lease shall be addressed, if to the lessee, to the County of Los Angeles, 433 South Vermont Avenue, Los Angeles, CA 90020, if to the Government, to the District Engineer, U.S. Army Engineer District, L. A., P.O. Box 2711, L.A., CA 90053-2325, ATTN: Real Estate Division. or as may from time to time be directed by the parties. Notice shall be deemed to have been duly given if and when inclosed in a properly sealed envelope or wrapper, addressed as aforesaid and deposited postage prepaid (or, if mailed by the Government, deposited under its franking privilege) in a post office or branch post office regularly maintained by the United States Government.

17. This lease is subject to all existing easements, and easements subsequently granted, for roadways, and utilities located or to be located on the premises, provided that the proposed grant of any easement will be coordinated with the lessee and easements will not be granted which will interfere with developments, present or proposed, by the lessee.

NOTE: Conditions 18-34 are set out on pages 4-7, attached.

IN WITNESS WHEREOF I have hereunto set my hand this 14th day of JUNE, 1988

Gordon M. Hobbs

Gordon M. Hobbs
Assistant for Real Property
OASA(L&L)

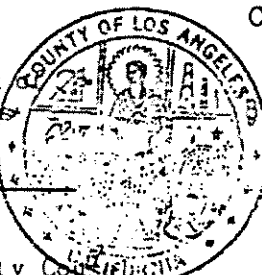
The above instrument, together with the provisions and conditions thereof, is hereby accepted this 14th day of April, 1987

ATTEST:
LARRY J. MONTEILH
Executive Officer-Clerk
the Board of Supervisors

BY: *Joyce Harris*
Deputy

APPROVED AS TO FORM:
DE WITT W. CLINTON-County Clerk

BY: *Eric R. Young*



COUNTY OF LOS ANGELES

John A. ...
Chairman, Board of Supervisors

NOT AFFIDAVIT

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

68

APR 14 1987

Larry J. Monteilh

LARRY J. MONTEILH
EXECUTIVE OFFICER



I hereby certify that pursuant to
Section 25103 of the Government Code,
delivery of this document has been made.

LARRY J. MONTEILH
Executive Officer
Clerk of the Board of Supervisors

By *Jose S. Sandoval*
DEPUTY

Secretary of the Army
Lease No. DACW09-1-86-43
Whittier Narrows Flood Control
Basin
Los Angeles County, California
County of Los Angeles

18. That in order to protect the United States and the Los Angeles County Flood Control District and the lessee against claims for damages which might arise out of the use and occupation of said leased premises by persons to whom the lessee may grant concessions, licenses or subleases, the lessee herein agrees to insert a condition in each such concession, or license which it grants pursuant to Condition No. 10 hereof, which shall be in substantially the following form:

The concessionaire, licensee or sublessee, in consideration of the granting of this concession, license or sublease, agrees to hold the United States, the Los Angeles County Flood Control District, and the County of Los Angeles harmless from any and all claims or rights of action for damages which may or might arise or accrue to said concessionaire, licensee or sublessee, his officers, agents, servants, employees, or others who may be on the leased premises at his invitation or the invitation of any one of them, by reason of injuries to the property, or the person of any of them resulting from the entry upon or the use of the leased premises, by the United States, the Los Angeles County Flood Control District, the County of Los Angeles, or any one of them, at any time, for any purpose necessary or convenient in connection with river and flood control work, or for the removal of timber required or necessary for such work, or by reason of the flooding of the leased premises, or any part thereof, when in the judgment of any of them, such flooding is necessary in connection with flood control work.

19. Signed copies of each concession, license or sublease granted by the lessee herein shall be furnished to and filed with the said District Commander.

20. The lessee and its sublessees may conduct such revenue-producing activities as are within the scope of Condition 2 above. Except for timber salvaged and sold by the county when in the way of construction, all sales of forest products will be conducted by the Government and the proceeds therefrom shall not be available to the lessee under the provisions of this lease. Non-price supported crops may be cultivated either directly, or on a share-cropping basis to the extent the crop is required to

Lease No. DACW09-1-86-43
Whittier Narrows FCB
County of Los Angeles

provide food and habitat for wildlife. The Government reserves the right to lease lands covered by this instrument for agricultural or grazing purposes, unless the enhancement of the fish/wildlife habitat is essential to the conservation and development of the premises by the lessee. In the latter event, the sublease will be approved in writing by the Government. The lessee will reserve at least one area at which access to the project may be reached without imposition of fees of any kind. No facilities need be provided at this area by the lessee, but normal maintenance and clean-up will be provided.

21. The rates and prices charged by the lessee or its grantees for revenue-producing activities shall be reasonable and comparable to rates charged for similar goods and services by others in the area and on the reservoir. The Government shall have the right to review such rates and prices and require an increase or reduction where it finds the objective of this condition has been violated.

22. In acting under its rights and obligations hereunder, the lessee agrees to comply with all applicable Federal and State laws and regulations.

23. The lessee shall be responsible for operation, maintenance and replacement without cost to the Government, of all facilities developed on the premises for recreational opportunities. As used in this lease, the term "replacement" shall be construed to mean the replacement in whole or in part of any structures or improvement so worn or damaged by any cause as to no longer adequately serve its designed function with normal maintenance. The lessee shall maintain all lands, waters and facilities on the premises in a manner satisfactory to the Government. If any other property of the Government is damaged or destroyed by the lessee incident to the exercise of the privileges herein granted it shall be promptly repaired or replaced by the lessee to the satisfaction of the Government.

24. The Government or its assignees will operate and maintain those lands, structures, and facilities such as but not limited to the inlet structure, outlet works, service roads and any facilities required for control and regulation of waters passing through the project.

Lease No. DACW09-1-86-43
Whittier Narrows FCB
County of Los Angeles

25. That no human habitation will be permitted on the premises. This will not be construed to prohibit the lessee from providing properly designed and approved guard-stations for night watchman or other patrolmen.

26. That the right is reserved to the United States to renew or enter into leases for agricultural use of any of the lands covered by this lease and not being developed by the lessee for park and recreational purposes, pending written notice by the lessee to the District Commander prior to 1 July of any given year of its desire to develop such lands for said purposes, such desired lands to be generally contiguous to lands already developed for park and recreational purposes, and the District Commander shall terminate or modify said agricultural leases, effective 31 December of the year notice is given.

27. That the right is hereby reserved to the United States to conduct sales of its remaining surplus improvements on unimproved land within the demised premises and to construct, or to permit the construction of, facilities for military requirements and for communications, electrical distribution or transmission, water supply, flood channels, sewage disposal and similar purposes on the premises, and the lessee shall have no claim for compensation or damages of any character on account thereof.

28. That the lessee shall not permit on the premises gambling or any games of chance, or install or operate, or permit to be installed and operated, any devices where money is exchanged for money, or any devices or concessions which are contrary to good morals or are otherwise objectionable.

29. That it is understood that this instrument is effective only insofar as the rights of the United States in the property covered by this lease are concerned, and the lease shall obtain such permission as may be necessary on account of any other existing rights.

30. That the United States acquired no mineral rights within the leased area and nothing within this lease shall be construed to indicate that the United States, in granting this lease prohibits drilling or exploration work by owners of mineral rights or their lessees.

31. That any and all references to the term District Engineer is changed to read District Commander.

Lease No. DACW09-1-86-43
Whittier Narrows FCB
County of Los Angeles

32. The lessee shall not unlawfully pollute the air, ground, or water or create a public nuisance. The lessee shall at no cost to the United States promptly comply with present and future Federal, state and local laws, ordinances, regulations, or instructions controlling the quality of the environment. The lessee shall not be responsible for pollution caused by others.

33. The lessee shall not remove or disturb or cause or permit to be removed or disturbed, any historical, archeological or other cultural artifacts, relics, vestiges, remains or objects of antiquity. In the event such items are discovered on the premises, the lessee shall immediately notify said officer and protect the site and material from further disturbance until said officer gives clearance to proceed.

34. That before execution of this lease, the following changes were made:

Revised: Condition Nos. 7, 11 and 15.
Deleted: Condition No. 12.
Added: Condition Nos. 18 through 34. Condition Nos. 18 through 34 are contained on pages 4, 5, 6 and 7, attached hereto and made a part hereof.

This lease supersedes License No. DA-04-353-CIVENG-57-198.

ASSURANCE OF COMPLIANCE WITH THE DEPARTMENT
OF DEFENSE DIRECTIVE UNDER TITLE VI OF THE
CIVIL RIGHTS ACT OF 1964

The County of Los Angeles (hereinafter called "Applicant-Recipient") HEREBY AGREES THAT it will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and all requirements imposed by or pursuant to the directive of the Department of Defense (32 CFR Part 300, issued as Department of Defense Directive 5500.11, December 28, 1964) issued pursuant to that title, to the end that, in accordance with Title VI of that Act and the Directive, no person in the United States shall, on the ground of race, color, sex, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant-Recipient receives Federal financial assistance from the Department of the Army and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Applicant-Recipient by the Department of the Army, assurance shall obligate the Applicant-Recipient, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is so provided, this assurance shall obligate the Applicant-Recipient for the period during which it retains ownership or possession of the property. In all other cases, this assurance shall obligate the Applicant-Recipient for the period during which the Federal financial assistance is extended to it by the Department of the Army.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Applicant-Recipient by the Department, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Applicant-Recipient recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant-Recipient, its successors, transferees, and assignees and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Applicant-Recipient.

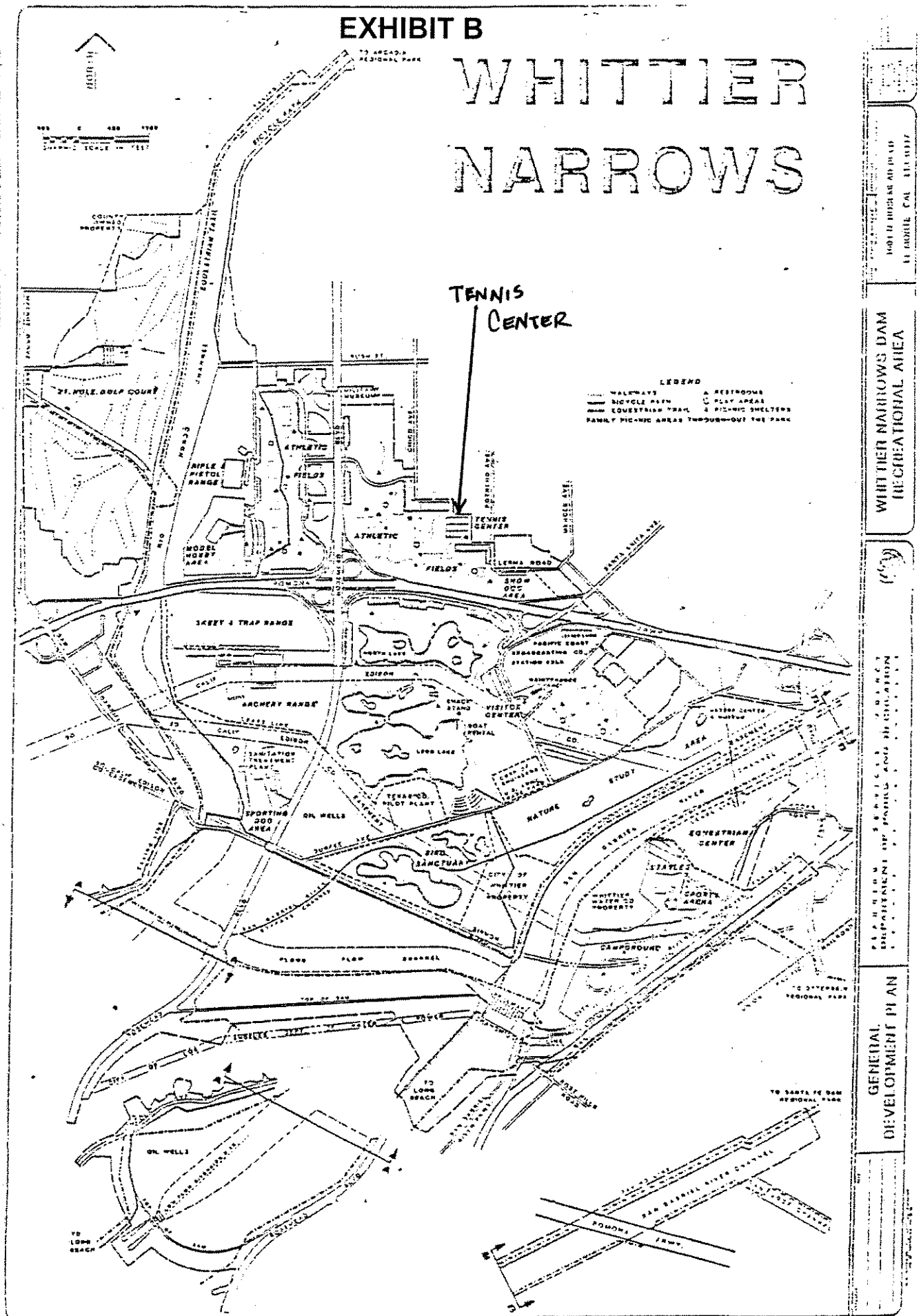
Date APR-14 1987

County of Los Angeles
(Applicant-Recipient)



By [Signature]
(President, Chairman of Board,
or comparable authorized
official)

WHITTIER NARROWS



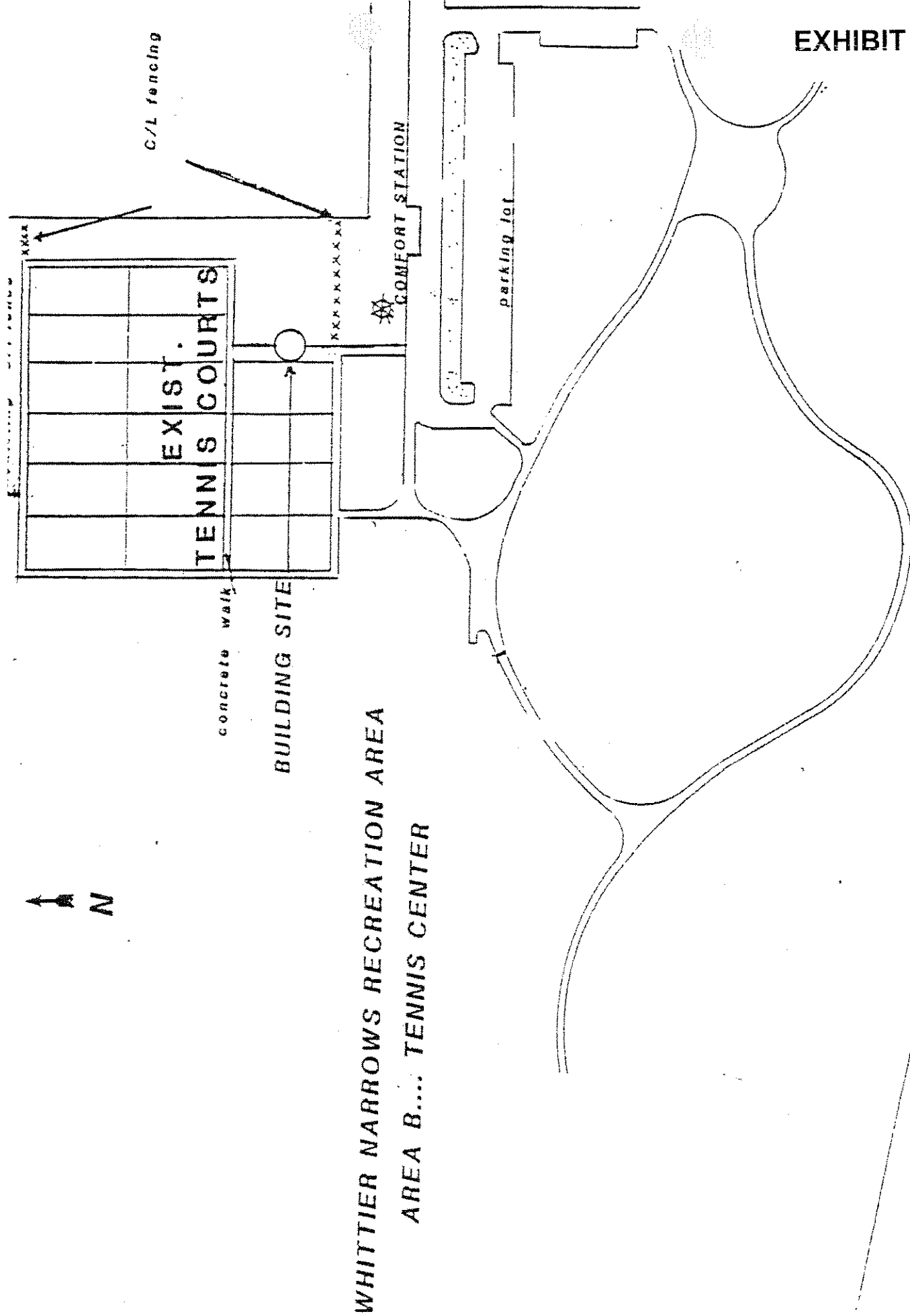


EXHIBIT C
Required Capital Improvement Projects

Capital Improvement	Time Frame	Estimated Cost
Construct Multi-purpose Area for Awards and Picnics	Second year	\$15,000
Install Public Address System	Second year	\$3,000
	Total Second Year	\$18,000
Resurface Courts 1-4	Third year	\$12,000
	Total Third Year	\$12,000
Resurface Courts 5-10	Fourth year	\$18,000
	Total Fourth Year	\$18,000
Resurface Courts 11-16	Fifth year	\$18,000
	Total Fifth Year	\$18,000
	Total All Projects	\$66,000

EXHIBIT C-1

Proposed Capital Improvement Projects

Capital Improvement		Estimated Improvement Cost
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Projects to be completed during the first year of the Agreement

Replace and install 2' x 10' wooden planks on existing spectator bleachers (3 sets)		\$800
Replace and install new flooring and drywall on second floor of Pro Shop Building		\$7,400
Total		\$8,200

Projects to be completed during the fourth year of the Initial 5 year Term

Remodel Pro Shop Building restrooms		\$13,800
16 shut-off valves, 4 each shower heads, sinks, fixtures		\$5,000
Built-in Lockers		\$4,400
Counters		\$4,400
Remodel Pro Shop Building interior		\$12,000
Removal/Replacement Pro Shop Counter		\$5,000
New Slat Wall		\$3,000
Painting		\$4,000
Upgrade Pro Shop Building electrical system		\$1,800
Total		\$27,600

Total All Proposed Capital Projects		\$35,800
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EXHIBIT D
Title 2 Administration
Chapter 2.202 Determinations of Contractor Non-Responsibility
And Contractor Debarment

2.202.010 Findings and Declarations.

The Board of Supervisors finds that, in order to promote integrity in the County's contracting processes and to protect the public interest, the County's policy shall be to conduct business only with responsible contractors. Determinations of contractor non-responsibility and contractor debarment shall be made in accordance with the procedures set forth in the ordinance codified in this chapter and implementation instructions issued by the auditor-controller. (Ord. 2000-0011 § 1 (part), 2000.)

2.202.020 Definitions.

For purposes of this chapter, the following definitions apply:

A. "Contractor" means a person, partnership, corporation or other entity who has contracted with, or is seeking to contract with, the County or a nonprofit corporation created by the County to provide goods to, or perform services for or on behalf of, the County or a nonprofit corporation created by the County. A contractor includes a contractor, subcontractor, vendor, or any person or entity who or which owns an interest of 10 percent or more in a contractor, subcontractor or vendor.

B. "Contract" means any agreement to provide goods to, or perform services for or on behalf of, the County.

C. "Debarment" means an action taken by the County which results in a contractor being prohibited from bidding or proposing on, being awarded and/or performing work on a contract with the County for a period of up to three years. A contractor who has been determined by the County to be subject to such a prohibition is "debarred."

D. "Department head" means either the head of a department responsible for administering a particular contract for the County or the designee of same.

E. "County" means the County of Los Angeles, any public entities for which the board of supervisors is the governing body and any joint powers authorities that have adopted County contracting procedures.

F. "Contractor hearing board" means the persons designated to preside over contractor debarment hearings and make recommendations on debarment to the board of supervisors.

G. Determination of "non-responsibility" means an action taken by the County which results in a contractor who submitted a bid or proposal on a particular contract being prohibited from being awarded and/or performing work on that contract. A contractor who has been determined by the County to be subject to such a prohibition is "non-responsible" for purposes of that particular contract. (Ord. 2004-0009 § 1, 2004; Ord. 2000-0011 § 1 (part), 2000.)

EXHIBIT D
Title 2 Administration
Chapter 2.202 Determinations of Contractor Non-Responsibility
And Contractor Debarment

2.202.030 Determination of Contractor Non-Responsibility.

A. Prior to a contract being awarded by the County, the County may determine that a contractor submitting a bid or proposal is non-responsible for purposes of that contract. In the event that the County determines that a contractor is non-responsible for a particular contract, said contractor shall be prohibited from being awarded and/or performing work on that contract.

B. The County may declare a contractor to be non-responsible for purposes of a particular contract if the County, in its discretion, finds that the contractor has done any of the following: (1) violated a term of a contract with the County or a nonprofit corporation created by the County; (2) committed an act or omission which negatively reflects on the contractor's quality, fitness or capacity to perform a contract with the County, any other public entity, or a nonprofit corporation created by the County, or engaged in a pattern or practice which negatively reflects on same; (3) committed an act or omission which indicates a lack of business integrity or business honesty; or (4) made or submitted a false claim against the County or any other public entity.

C. Before making a determination of non-responsibility pursuant to this chapter, the department head shall give written notice to the contractor of the basis for the proposed non-responsibility determination, and shall advise the contractor that a non-responsibility hearing will be scheduled on a date certain. Thereafter, the department head shall conduct a hearing where evidence on the proposed non-responsibility determination is presented. The contractor and/or attorney or other authorized representative of the contractor shall be afforded an opportunity to appear at the non-responsibility hearing and to submit documentary evidence, present witnesses and offer rebuttal evidence. After such hearing, the department head shall prepare a proposed decision, which shall contain a recommendation regarding whether the contractor should be found non-responsible with respect to the contract(s) at issue. A record of the hearing, the proposed decision and any recommendation shall be presented to the board of supervisors. The board of supervisors may, in its discretion, limit any further hearing to the presentation of evidence not previously presented. The board of supervisors shall have the right to modify, deny or adopt the proposed decision and recommendation of the department head. A non-responsibility finding shall become final upon approval by the board of supervisors.

D. The decision by the County to find a contractor non-responsible for a particular contract is within the discretion of the County. The seriousness and extent of the contractor's acts, omissions, patterns or practices as well as any relevant mitigating factors may be considered by the County in determining whether a contractor should be deemed non-responsible. (Ord. 2004-0009 § 2, 2004: Ord. 2000-0011 § 1 (part), 2000.)

EXHIBIT D
Title 2 Administration
Chapter 2.202 Determinations of Contractor Non-Responsibility
And Contractor Debarment

2.202.040 Debarment of Contractors.

A. The County may debar a contractor who has had a contract with the County in the preceding three years and/or a contractor who has submitted a bid or proposal for a new contract with the County.

B. The County may debar a contractor if the County finds, in its discretion, that the contractor has done any of the following: (1) violated a term of a contract with the County or a nonprofit corporation created by the County; (2) committed an act or omission which negatively reflects on the contractor's quality, fitness or capacity to perform a contract with the County, any other public entity, or a nonprofit corporation created by the County, or engaged in a pattern or practice which negatively reflects on same; (3) committed an act or omission which indicates a lack of business integrity or business honesty; or (4) made or submitted a false claim against the County or any other public entity.

C. Before making a debarment determination pursuant to this chapter, the department head shall give written notice to the contractor of the basis for the proposed debarment, and shall advise the contractor that a debarment hearing will be scheduled on a date certain. The contractor hearing board shall conduct a hearing where evidence on the proposed debarment is presented. The contractor and/or attorney or other authorized representative must be given an opportunity to appear at the debarment hearing and to submit documentary evidence, present witnesses, and offer rebuttal evidence at that hearing. After such hearing, the contractor hearing board shall prepare a proposed decision, which shall contain a recommendation regarding whether the contractor should be debarred and, if so, the appropriate length of time for the debarment. A record of the hearing, the proposed decision and any recommendation shall be presented to the board of supervisors. The board of supervisors may, in its discretion, limit any further hearing to the presentation of evidence not previously presented. The board of supervisors shall have the right to modify, deny or adopt the proposed decision and recommendation of the contractor hearing board. A debarment finding shall become final upon the approval of the board of supervisors.

D. The decision by the County to debar a contractor is within the discretion of the County. The seriousness and extent of the contractor's acts, omissions, patterns or practices as well as any relevant mitigating factors may be considered by the County in making a debarment decision. The County shall have the right, in its discretion, to determine the period of time that the contractor may be debarred, which period may not exceed three years. In addition, upon a debarment finding by the board of supervisors, the County may, in its discretion, terminate any or all existing contracts the contractor may have with the County. In the event that any existing contract is terminated by the County, the County shall maintain the right to pursue all other rights and remedies provided by the contract and/or applicable law. (Ord. 2004-0009 § 3, 2004: Ord. 2000-0011 § 1 (part), 2000.)

EXHIBIT D
Title 2 Administration
Chapter 2.202 Determinations of Contractor Non-Responsibility
And Contractor Debarment

2.202.050 Pre-Emption.

In the event any contract is subject to federal and/or state laws that are inconsistent with the terms of the ordinance codified in this chapter, such laws shall control. (Ord. 2000-0011 § 1 (part), 2000.)

2.202.060 Severability.

If any section, subsection, subpart or provision of this chapter, or the application thereof to any person or circumstances, is held invalid, the remainder of the provisions of this chapter and the application of such to other persons or circumstances shall not be affected thereby. (Ord. 2000-0011 § 1 (part), 2000.)



Department of the Treasury
Internal Revenue Service

Notice 1015

(Rev. December 2004)

Have You Told Your Employees About the Earned Income Credit (EIC)?

What Is the EIC?

The EIC is a refundable tax credit for certain workers.

What's New. Workers cannot claim the EIC if their 2004 investment income (such as interest and dividends) is over \$2,650.

Which Employees Must I Notify About the EIC?

You must notify each employee who worked for you at any time during the year and from whom you did not withhold income tax. However, you do not have to notify any employee who claimed exemption from withholding on Form W-4, Employee's Withholding Allowance Certificate.

Note. You are encouraged to notify each employee whose wages for 2004 are less than \$35,458 that he or she may be eligible for the EIC.

How and When Must I Notify My Employees?

You must give the employee one of the following:

- The IRS Form W-2, Wage and Tax Statement, which has the required information about the EIC on the back of Copy B.
- A substitute Form W-2 with the same EIC information on the back of the employee's copy that is on Copy B of the IRS Form W-2.
- Notice 797, Possible Federal Tax Refund Due to the Earned Income Credit (EIC).
- Your written statement with the same wording as Notice 797.

If you are required to give Form W-2 and do so on time, no further notice is necessary if the Form W-2 has the required information about the EIC on the back of the employee's copy. If a substitute Form W-2 is given on time but does not have the required information, you must notify the employee within 1 week of the date the substitute Form W-2 is given. If Form W-2 is required but is not given on time, you must give the employee Notice 797 or your written statement by the date Form W-2 is required to be given. If Form W-2 is not required, you must notify the employee by February 7, 2005.

You must hand the notice directly to the employee or send it by First-Class Mail to the employee's last known address. You will not meet the notification requirements by posting Notice 797 on an employee bulletin board or sending it through office mail. However, you may want to post the notice to help inform all employees of the EIC. You can get copies of the notice by calling 1-800-829-3676, or from the IRS website at www.irs.gov.

How Will My Employees Know If They Can Claim the EIC?

The basic requirements are covered in Notice 797. For more detailed information, the employee needs to see the 2004 instructions for Form 1040, 1040A, 1040EZ, or Pub. 596, Earned Income Credit (EIC).

How Do My Employees Claim the EIC?

Eligible employees claim the EIC on their 2004 tax return. Even employees who have no tax withheld from their pay or owe no tax can claim the EIC and get a refund, but they must file a tax return to do so. For example, if an employee has no tax withheld in 2004 and owes no tax but is eligible for a credit of \$791, he or she must file a 2004 tax return to get the \$791 refund.

How Do My Employees Get Advance EIC Payments?

Eligible employees who expect to have a qualifying child for 2005 can get part of the credit with their pay during the year by giving you a completed Form W-5, Earned Income Credit Advance Payment Certificate. You **must** include advance EIC payments with wages paid to these employees, but the payments are not wages and are not subject to payroll taxes. Generally, the payments are made from withheld income, social security, and Medicare taxes. For details, see Pub. 15 (Circular E), Employer's Tax Guide.

Notice 1015
(Rev. 12-2004)

No shame. No blame. No names.

**Newborns can be safely given up
at any Los Angeles County
hospital emergency room or fire station.**



**In Los Angeles County:
1-877-BABY SAFE
1-877-222-9723
www.babysafela.org**



State of California
Gray Davis, Governor

Health and Human Services Agency
Grantland Johnson, Secretary

Department of Social Services
Rita Saenz, Director



Los Angeles County Board of Supervisors

Gloria Molina, Supervisor, First District
Yvonne Brathwaite Burke, Supervisor, Second District
Zev Yaroslavsky, Supervisor, Third District
Don Knabe, Supervisor, Fourth District
Michael D. Antonovich, Supervisor, Fifth District

This initiative is also supported by First 5 LA and INFO LINE of Los Angeles.

EXHIBIT F

What is the Safely Surrendered Baby Law?

California's Safely Surrendered Baby Law allows parents to give up their baby confidentially. As long as the baby has not been abused or neglected, parents may give up their newborn without fear of arrest or prosecution.

How does it work?

A distressed parent who is unable or unwilling to care for a baby can legally, confidentially and safely give up a baby within three days of birth. The baby must be handed to an employee at a Los Angeles County emergency room or fire station. As long as the child shows no signs of abuse or neglect, no name or other information is required. In case the parent changes his or her mind at a later date and wants the baby back, workers will use bracelets to help connect them to each other. One bracelet will be placed on the baby, and a matching bracelet will be given to the parent.

What if a parent wants the baby back?

Parents who change their minds can begin the process of reclaiming their newborns within 14 days. These parents should call the Los Angeles County Department of Children and Family Services at 1-800-540-4000.

Can only a parent bring in the baby?

In most cases, a parent will bring in the baby. The law allows other people to bring in the baby if they have legal custody.

Does the parent have to call before bringing in the baby?

No. A parent can bring in a baby anytime, 24 hours a day, 7 days a week so long as the parent gives the baby to someone who works at the hospital or fire station.

Does a parent have to tell anything to the people taking the baby?

No. However, hospital personnel will ask the parent to fill out a questionnaire designed to gather important medical history information, which is very useful in caring for the child. Although encouraged, filling out the questionnaire is not required.

What happens to the baby?

The baby will be examined and given medical treatment, if needed. Then the baby will be placed in a pre-adoptive home.

What happens to the parent?

Once the parent(s) has safely turned over the baby, they are free to go.

Why is California doing this?

The purpose of the Safely Surrendered Baby Law is to protect babies from being abandoned by their parents and potentially being hurt or killed. You may have heard tragic stories of babies left in dumpsters or public bathrooms. The parents who committed these acts may have been under severe emotional distress. The mothers may have hidden their pregnancies, fearful of what would happen if their families found out. Because they were afraid and had nowhere to turn for help, they abandoned their infants. Abandoning a baby puts the child in extreme danger. It is also illegal. Too often, it results in the baby's death. Because of the Safely Surrendered Baby Law, this tragedy doesn't ever have to happen in California again.

A baby's story

At 8:30 a.m. on Thursday, July 25, 2002, a healthy newborn baby was brought to St. Bernardine Medical Center in San Bernardino under the provisions of the California Safely Surrendered Baby Law. As the law states, the baby's mother did not have to identify herself. When the baby was brought to the emergency room, he was examined by a pediatrician, who determined that the baby was healthy and doing fine. He was placed with a loving family while the adoption process was started.

Every baby deserves a chance for a healthy life. If someone you know is considering abandoning a newborn, let her know there are other options.

It is best that women seek help to receive proper medical care and counseling while they are pregnant. But at the same time, we want to assure parents who choose not to keep their baby that they will not go to jail if they deliver their babies to safe hands in any Los Angeles County hospital ER or fire station.

Sin pena. Sin culpa. Sin peligro.

**Los recién nacidos pueden ser entregados
en forma segura en la sala de emergencia de
cualquier hospital o en un cuartel de bomberos
del Condado de Los Angeles.**



En el Condado de Los Angeles:

1-877-BABY SAFE

1-877-222-9723

www.babysafela.org



Estado de California
Gray Davis, Gobernador

Agencia de Salud y Servicios Humanos
(Health and Human Services Agency)
Grantland Johnson, Secretario

Departamento de Servicios Sociales
(Department of Social Services)
Rita Saenz, Directora



Consejo de Supervisores del Condado de Los Angeles

Gloria Molina, Supervisora, Primer Distrito

Yvonne Brathwaite Burke, Supervisora, Segundo Distrito

Zev Yaroslavsky, Supervisor, Tercer Distrito

Don Knabe, Supervisor, Cuarto Distrito

Michael D. Antonovich, Supervisor, Quinto Distrito

Esta Iniciativa tambien esta apollada por First 5 LA y INFO LINE de Los Angeles.

EXHIBIT F

¿Qué es la Ley de Entrega de Bebés Sin Peligro?

La Ley de Entrega de Bebés Sin Peligro de California permite a los padres entregar a su recién nacido confidencialmente. Siempre que el bebé no haya sufrido abuso ni negligencia, padres pueden entregar a su recién nacido sin temor a ser arrestados o procesados.

¿Cómo funciona?

El padre/madre con dificultades que no pueda o no quiera cuidar de su recién nacido puede entregarlo en forma legal, confidencial y segura, dentro de los tres días del nacimiento. El bebé debe ser entregado a un empleado de una sala de emergencias o de un cuartel de bomberos del Condado de Los Angeles. Siempre que el bebé no presente signos de abuso o negligencia, no será necesario suministrar nombres ni información alguna. Si el padre/madre cambia de opinión posteriormente y desea recuperar a su bebé, los trabajadores utilizarán brazaletes para poder vincularlos. El bebé llevará un brazalet y el padre/madre recibirá un brazalet igual.

¿Qué pasa si el padre/madre desea recuperar a su bebé?

Los padres que cambien de opinión pueden empezar el proceso de redamar a su recién nacido dentro de los 14 días. Estos padres deberán llamar al Departamento de Servicios para Niños y Familias (Department of Children and Family Services) del Condado de Los Angeles, al 1-800-540-4000.

¿Sólo los padres podrán llevar al recién nacido?

En la mayoría de los casos, los padres son los que llevan al bebé. La ley permite que otras personas lleven al bebé si tienen la custodia legal del menor.

¿Los padres deben llamar antes de llevar al bebé?

No. El padre/madre puede llevar a su bebé en cualquier momento, las 24 horas del día, los 7 días de la semana, mientras que entregue a su bebé a un empleado del hospital o de un cuartel de bomberos.

¿Es necesario que el padre/madre diga algo a las personas que reciben al bebé?

No. Sin embargo, el personal del hospital le pedirá que llene un cuestionario con la finalidad de recabar antecedentes médicos importantes, que resultan de gran utilidad para los cuidados que recibirá el bebé. Es recomendado llenar este cuestionario, pero no es obligatorio hacerlo.

¿Qué ocurrirá con el bebé?

El bebé será examinado y, de ser necesario, recibirá tratamiento médico. Luego el bebé se entregará a un hogar preadoptivo.

¿Qué pasará con el padre/madre?

Una vez que los padres hayan entregado a su bebé en forma segura, serán libres de irse.

¿Por qué California hace esto?

La finalidad de la Ley de Entrega de Bebés Sin Peligro es proteger a los bebés del abandono por parte de sus padres y de la posibilidad de que mueran o sufran daños. Usted probablemente haya escuchado historias trágicas sobre bebés abandonados en basureros o en baños públicos. Es posible que los padres que cometieron estos actos hayan estado atravesando dificultades emocionales graves. Las madres pueden haber ocultado su embarazo, por temor a lo que pasaría si sus familias se enteraran. Abandonaron a sus recién nacidos porque tenían miedo y no tenían adonde recurrir para obtener ayuda. El abandono de un recién nacido lo pone en una situación de peligro extremo. Además es ilegal. Muy a menudo el abandono provoca la muerte del bebé. Ahora, gracias a la Ley de Entrega de Bebés Sin Peligro, esta tragedia ya no debe suceder nunca más en California.

Historia de un bebé

A las 8:30 a.m. del jueves 25 de julio de 2002, se entregó un bebé recién nacido saludable en el St. Bernardine Medical Center en San Bernardino, en virtud de las disposiciones de la Ley de Entrega de Bebés Sin Peligro. Como lo establece la ley, la madre del bebé no se tuvo que identificar. Cuando el bebé llegó a la sala de emergencias, un pediatra lo revisó y determinó que el bebé estaba saludable y no tenía problemas. El bebé fue ubicado con una buena familia, mientras se iniciaban los trámites de adopción.

Cada recién nacido merece una oportunidad de tener una vida saludable. Si alguien que usted conoce está pensando en abandonar a un recién nacido, infórmele qué otras opciones tiene.

Es mejor que las mujeres busquen ayuda para recibir atención médica y asesoramiento adecuado durante el embarazo. Pero al mismo tiempo, queremos asegurarles a los padres que optan por no quedarse con su bebé que no irán a la cárcel si dejan a sus bebés en buenas manos en cualquier sala de emergencia de un hospital o en un cuartel de bomberos del Condado de Los Angeles.

EXHIBIT G

PROPOSER'S EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

Ken Hance
Proposer's Name
25924 Rolling Hill Road, Torrance, CA 90505
Business Address
95-4562711
Internal Revenue Service Employer Identification Number

GENERAL

In accordance with Subchapter VI of the Civil Rights Act of 1964, 42 USC Sections 2000e through 2000e-17, Section 504 of the Rehabilitation Act of 1975, the Food Stamp Act of 1977, the Welfare and Institutions Code Section 1000, Americans with Disability Act of 1990, California Department of Social Services Manual of Policies and Procedures Division 21, the Contractor, supplier, or vendor certifies and agrees that all persons employed by such firm, its affiliates, subsidiaries, or holding companies are and will be treated equally by the firm without regard to or because of race, creed, color, national origin, political affiliation, marital status, age, disability, or sex and in compliance with all anti-discrimination laws of the United States of America and the State of California.

PROPOSER'S CERTIFICATION

- | | <u>Check One</u> |
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| 1. The Proposer has a written policy statement prohibiting discrimination in all phases of employment. | <input checked="" type="checkbox"/> Yes [] No |
| 2. The Proposer periodically conducts a self analysis or utilization analysis of its work force. | <input checked="" type="checkbox"/> Yes [] No |
| 3. The Proposer has a system for determining if its employment practices are discriminatory against protected groups. | <input checked="" type="checkbox"/> Yes [] No |
| 4. Where problem areas are identified in employment practices, the Proposer has a system for taking reasonable corrective action which includes the establishment of goals and timetables. | <input checked="" type="checkbox"/> Yes [] No |

Name (please print or type) Ken Hance
Title of Signer (please print or type) Partner
Signature Ken Hance Date 10/5/2004